

United States
Circuit Court of Appeals
For the Ninth Circuit.

WALTER B. MITCHELL,

Appellant,

vs.

THE LELAND COMPANY, a Corporation,
FRANK LINN and THEODORE LELAND,
Appellees.

Transcript of Record.

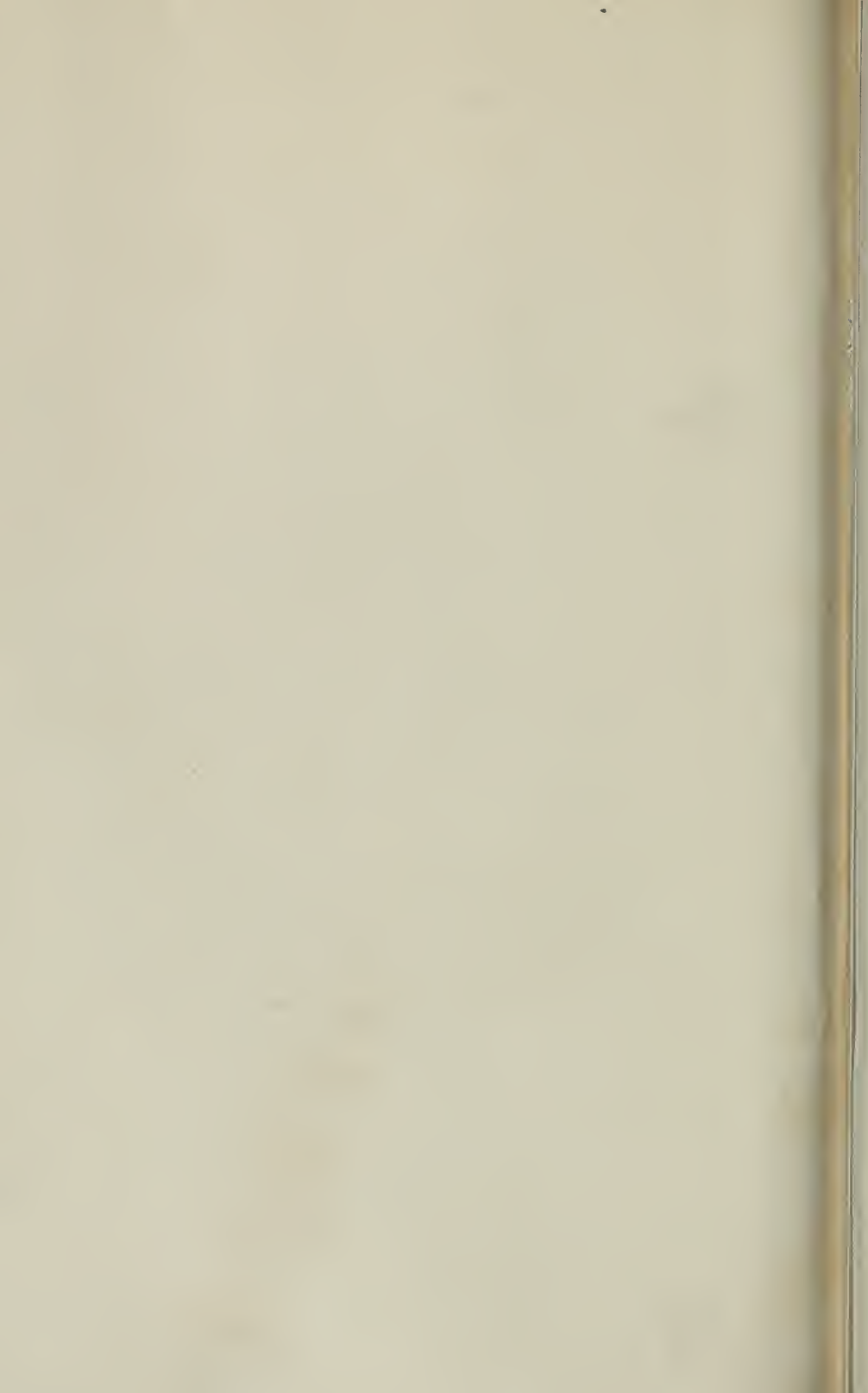
Upon Appeal from the United States District Court for the
District of Montana.

Filed

AUG 16 1917

F. D. Monckton,

Clerk.



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Circuit Court of Appeals
For the Ninth Circuit.

WALTER B. MITCHELL,

Appellant,

vs.

THE LELAND COMPANY, a Corporation,
FRANK LINN and THEODORE LELAND,
Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the
District of Montana.

THE UNIVERSITY OF CHICAGO PRESS

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

WALTER B. MITCHELL, Esq., of Spokane,
Washington,

Attorney for Plaintiff and Appellant.

C. B. NOLAN, Esq., of Helena, Montana, and
FRED L. GIBSON, Esq., of Livingston,
Montana,

Attorneys for Defendants and Appellees.

[1*]

*In the District Court of the United States, in and for
the District of Montana.*

No. 56—IN EQUITY.

WALTER B. MITCHELL,

Plaintiff,

vs.

THE LELAND COMPANY, a Corporation, and
FRANK LIND, Pres., and THEODORE
LELAND, Sec. of said Corporation,

Defendants.

BE IT REMEMBERED, that on May 24, 1915,
the plaintiff filed his bill of complaint herein, in the
words and figures following, to wit: [2]

*Page-number appearing at foot of page of original certified Transcript
of Record.

*In the District Court of the United States, in and for
the 4th Division of the State of Montana.*

No. —.

WALTER B. MITCHELL,

Plaintiff,

vs.

THE LELAND COMPANY, a Corporation, and
FRANK LIND, Pres., and THEODORE
LELAND, Sec. of said Corporation,
Defendants.

Bill of Complaint.

Comes now the plaintiff and for cause of action
alleges:

I.

That the plaintiff, Walter B. Mitchell, is a resident of the State of Washington, and located and doing business in the city of Spokane. And the defendant, The Leland Company, is a corporation duly organized and existing by virtue of the laws of the State of Montana, with their principal place of business at Gardiner, Montana. And the defendant Frank Lind is the president of said corporation, and the defendant Theodore Leland is the secretary of said corporation, and both of them reside at Gardiner, Montana, and are residents of the State of Montana.

II.

That this is a suit brought by the plaintiff, who is a citizen and resident of the State of Washington, against the defendants, who are at the time of the starting of this suit citizens and residents of the

State of Montana, residing in Park County and in the jurisdiction of the 4th division of this court, in said State of Montana, for the purpose of forcing the said defendant corporation and its officers to transfer 50 shares of stock of said corporation of a value of, to wit, \$5,000.00 upon the books of said corporation.

III.

That the said corporation, defendant herein, was at all times herein mentioned so incorporated and licensed by the State of Montana to do business and authorized to issue stock in said [3] corporation to the value of \$20,000 dollars, divided into 200 shares at a par value of \$100 per share, and pursuant to said authorization and the by-laws of the said corporation, Leland Company, the said corporation, issued a certificate of stock to one S. O. Leland, on the 20th day of Sept., 1911, fully paid up and duly signed and sealed with the corporate seal, and being certificate No. 1, for fifty shares of the capital stock of the said authorized issue of 200 shares, or one-fourth interest in said corporation's property, a copy of which certificate is in words and figures as follows:

Incorporated Under the Laws of the State of
Montana.

Number	Shares
1.	50.

THE LELAND COMPANY.

Capital Stock \$20,000.00.

This certifies that S. O. Leland is the owner of

Fifty shares of One Hundred Dollars each of the Capital Stock of the Leland Company. Shares \$100 each.

Transferable only on the books of the corporation in person or by Attorney on surrender of this certificate.

In witness whereof the duly authorized officers have hereunto subscribed their names and caused the corporate seal to be hereto affixed. This 20th day of Sept., A. D. 1911.

[Seal]	FRANK LIND,	S. O. LELAND,
	Secretary.	President.
		Shares \$100 each.

That upon the back of said certificate the following is set forth in words and figures as follows:

“Certificate for 50 shares of the Capital stock of the Leland Company issued to S. O. Leland, dated Sept. 20, 1911. Notice: The signature of this assignment must correspond with the name written upon the face of the certificate in every particular without alterations or enlargement or change whatever.

For value received I hereby sell, transfer and assign to E. C. Murphy the shares of stock within mentioned and hereby authorize to make the necessary transfer on the books of the Corporation.

Witness — hand and seal this sixth day of March, 1912.

S. O. LELAND.”

IV.

That the plaintiff became the owner and holder of said stock on the 6th day of April, 1913, and has ever

since and now is the owner and holder of said certificate of stock heretofore set forth herein, and entitled to have the same transferred upon the books of the corporation defendant herein. [4]

V.

That the plaintiff has made frequent demands upon the said defendants corporation for the transfer of said stock and have received no reply whatsoever and finally on the 29th day of Nov., 1914, the plaintiff through his authorized agent presented the said stock together with the proper assignments hereof to the said corporation at its office in Gardiner, Montana, and demanded that it be transferred upon the books of the corporation in the name of the plaintiff, and the defendants through its officers refused to so transfer the same and still refuses to transfer the same to injury and damages of the plaintiff in the value of said stock and in the dividends of the same.

VI.

That the value of said stock at the present time and at the time of the demand upon the said corporation for the transfer thereof is and was the sum of \$5,000.

WHEREFORE, plaintiff prays that an order be made directed to the defendants The Leland Company and to its officers, Frank Lind and Theodore Leland, compelling the said defendants to issue to the plaintiff herein a certificate of stock for fifty shares of the capital stock of the said corporation, and to place his name upon the books of said cor-

poration upon the surrender of the old certificate to the defendants.

2. That should it be impossible to obtain said issue of the fifty shares, then and in that case the plaintiff prays that judgment may be entered against the defendants and each of them for the sum of \$5,000, the value thereof, with interest from the time of the conversion of said stock by the said corporation.

3. Plaintiff prays for general and such further relief that may be just and equitable to this court in such cases made and provided.

WALTER B. MITCHELL,

In Pro. Per.

State of Washington,
County of Spokane,—ss.

W. B. Mitchell, being first duly sworn, on oath deposes and says: That he is the plaintiff in the foregoing bill of complaint, has read the foregoing complaint and knows the contents thereof, and swears the same to be true as he verily believes.

WALTER B. MITCHELL.

Subscribed and sworn to before me this 22 day of May, 1915. [5]

[Seal]

JOHN E. ORR,

Notary Public in and for the State of Wash., Residing at Spokane.

Filed May 24, 1915. Geo. W. Sproule, Clerk. [6]

Thereafter, on July 22, 1915, the Answer of defendants was duly filed herein, in the words and figures following, to wit: [7]

In the District Court of the United States, District of Montana.

WALTER B. MITCHELL,

Plaintiff,

vs.

THE LELAND COMPANY, a Corporation, and
FRANK LIND, President, and THEODORE
LELAND, Sec. of said Corporation,
Defendants.

Answer.

Now come the defendants above named, and for answer to plaintiff's bill of complaint, admit, allege and deny as follows:

I.

Admit the allegations of paragraphs I, II, III and V.

II.

Deny the allegations of paragraphs IV and VI.

WHEREFORE having fully answered said bill of complaint, defendants ask that said bill of complaint be dismissed, and that they have judgment for costs against the plaintiff, or such other relief as may be just in the premises.

FRED L. GIBSON,

C. B. NOLAN,

Solicitors and Counsel for Defendants.

Filed July 22, 1915. Geo. W. Sproule, Clerk. [8]

Thereafter, on Oct. 13, 1915, a stipulation allowing an amendment to the bill of complaint and an amended bill of complaint were duly filed herein, in the words and figures following, to wit: [9]

In the District Court of the United States, in and for the 4th Division of the State of Montana.

No. —.

WALTER B. MITCHELL,

Plaintiff,

vs.

THE LELAND COMPANY, a Cor., et al.,

Defendants.

Stipulation Allowing Amendment to Bill of Complaint.

It is hereby stipulated by and between the parties herein by their respective attorneys that the plaintiff may amend his bill of complaint without first obtaining an order of the Court, and file and serve the same in said cause.

Dated this the 23d Sept., 1915.

W. B. MITCHELL,

In Pro. Per.

FRED L. GIBSON,

C. B. NOLAN,

Attorneys for Defendants. [10]

*In the District Court of the United States, in and for
the 4th Division of the State of Montana.*

No. 56.

WALTER B. MITCHELL,

Plaintiff,

vs.

THE LELAND COMPANY, a Corporation, and
FRANK LINN, Pres., and THEODORE
LELAND, Secretary of said Corporation,
Defendants.

Amended Bill of Complaint.

Comes now the plaintiff and for cause of action
alleges:

I.

That the plaintiff, Walter B. Mitchell, is a resident
of the State of Washington, and located and doing
business in the city of Spokane; and the defendant
the Leland Company is a corporation duly organized
and existing by virtue of the laws of the State of
Montana, with their principal place of business at
Gardiner, Montana; and the defendant Theodore
Leland is the secretary of said corporation and the
defendant Frank Linn is the president, and both
reside at Gardiner, Montana, and are residents of the
State of Montana.

II.

That this is a suit brought by the plaintiff, who is
a citizen and resident of the State of Washington,
against the defendants, who are at the time of start-

ing of this suit citizens and residents of the State of Montana, residing in Park County and in the jurisdiction of the 4th division of this court, in said State of Montana, for the purpose of recovering the value of 50 shares of stock of the aforesaid corporation, which was converted by the defendant corporation and which at the time of said conversion was worth the sum of \$5,000.

III.

That the said corporation was at all times herein mentioned so incorporated and licensed by the State of Montana to do business and authorized to issue stock in said corporation to the value of \$20,000 dollars, divided into 200 shares at a par value of \$100 per share, and *pursuance* to said authorization and by-laws of the said corporation, the Leland Company, the said corporation issued [11] a certificate of stock to one S. O. Leland, on the 20th day of Sept., 1911, fully paid up and duly signed and sealed with the corporate seal, and being certificate No. 1 for fifty shares of the capital stock of the said corporation's property, a copy of which certificate is in words and figures as follows:

Incorporated Under the Laws of the State of
Montana.

Number	Shares
1.	50.

THE LELAND COMPANY.

Capital Stock \$20,000.00.

This certifies that S. O. Leland is the owner of
Fifty Shares of One Hundred Dollars each of the

Capital Stock of the Leland Company; shares \$100.00 each.

Transferable only on the books of the corporation in person or by attorney on surrender of this certificate.

In witness whereof the duly authorized officers have hereunto subscribed their names and caused the corporate seal to be hereto affixed. This 20th day of Sept., A. D. 1911.

[Seal] FRANK LINN, S. O. LELAND,
Secretary. President.

Shares \$100 each.

That upon the back of said certificate the following is set forth in words and figures as follows:

“Certificate for 50 shares of the Capital stock of the Leland Company issued to S. O. Leland, dated Sept. 20, 1911. Notice: The signature of this assignment must correspond with the name written upon the face of the certificate in every particular without alteration or enlargement or change whatsoever.

For value received I hereby sell, transfer and assign to E. C. Murphy the shares of stock within mentioned and hereby authorize to make the necessary transfer on the books of the corporation.

Witness hand and seal this six day of March, 1912.

S. O. LELAND.”

IV.

That said certificate was again duly assigned by E. C. Murphy to A. Coolin and by him duly assigned

to the plaintiff, who is now the owner and holder of said certificate and entitled to have the same transferred upon the books of the corporation, and has been the owner of said certificate since the 5th day of June, 1913.

V.

That the plaintiff on the 17th of May, 1913, caused notice to be given the defendant the Leland Company on behalf of his assignor to transfer the said stock upon the books of the company, and was refused the transfer by the corporation and its officers and again made a formal demand through an agent of the assignor on the 2d day of June, 1913, and the said defendants refused to transfer said stock, and the plaintiff has since made demands upon the [12] corporation and presented the said certificate with proper assignments, etc., and the said corporation refused to transfer said stock and still refused to so transfer said stock to the damage of the plaintiff in the sum of \$5,000, and interest from the 2d of June, 1913, being the value of said stock at the time of the conversion thereof.

VI.

That the value of said stock at the time of the conversion thereof by the corporation was and now is the sum of \$5,000.

WHEREFORE, plaintiff prays judgment against the Leland Company, a corporation, in the sum of \$5,000 for the conversion of said stock, together with interest thereon from the 2d day of June, 1913, and costs and disbursements herein; and for such other

and further relief as to this Court seems proper.

WALTER B. MITCHELL,

In Pro. Per.

State of Washington,

County of Spokane,—ss.

Walter B. Mitchell, being first duly sworn, on oath deposes and says that he is the plaintiff herein and has read the foregoing bill of complaint and swears the same to be true as he verily believes.

WALTER B. MITCHELL.

Subscribed and sworn to before me this the 11th day of Oct., 1915.

[Seal]

JOHN E. ORR,

Notary Public in and for the State of Washington,
Residing at Spokane.

Filed Oct. 13, 1915. Geo. W. Sproule, Clerk. [13]

Thereafter on Oct. 21, 1915, an answer to the amended bill was duly filed herein, in the words and figures following, to wit: [14]

*In the District Court of the United States, in and for
the 4th Division of the State of Montana.*

WALTER B. MITCHELL,

Plaintiff,

vs.

THE LELAND COMPANY, a Corporation, and
FRANK LIND, Pres., and THEODORE
LELAND, Sec. of said Corporation,

Defendants.

Answer to Amended Bill of Complaint.

The defendants now make answer to the amended bill of complaint of the plaintiff on file herein and for such answer admit, deny and allege as follows:

I.

The defendants admit the allegations of paragraph one of the said amended bill of complaint.

II.

The defendants admit that the plaintiff herein is a resident of the State of Washington and that the defendants are citizens and residents of the State of Montana and reside within the territorial jurisdiction of the Fourth Division of this court in said State of Montana. The defendants further admit that the amended bill of complaint is filed for the purpose of recovering the value of fifty (50) shares of stock of the said corporation, the Leland Company, alleged to have been converted by the defendant corporation. The defendants deny each and every allegation in paragraph two of said amended bill of complaint contained not herein specifically admitted.

III.

Defendants admit the allegations of paragraph three of the amended bill of complaint. [15]

IV.

The defendants deny that plaintiff is the owner of said certificate of stock for fifty shares of the capital stock of said corporation and deny that the plaintiff is the owner of any stock in said corporation and in

respect to the allegations of paragraph four of said amended bill of complaint, the defendants allege: That on the sixth day of March, 1912, one S. O. Leland was the owner of fifty shares of the capital stock of said corporation, The Leland Company, the ownership of which was evidenced by certificate No. 1, of said corporation, which is the certificate of stock mentioned and a copy of which is set forth in paragraph three of the amended bill of complaint. That on the last-named date the said S. O. Leland transferred said fifty shares of stock in said corporation to one E. C. Murphy and thereupon executed the assignment thereof upon the back of said certificate as set forth in said paragraph three of the amended bill of complaint in consideration for the transfer to him by the said Murphy of certain real and personal property. That thereafter and on or about the first day of May, 1912, the said S. O. Leland and said E. C. Murphy by a mutual agreement rescinded, abrogated and annulled the said contract and agreement entered into between them on the sixth day of March, 1912, for the transfer and exchange of said fifty shares of stock in said corporation, by the said S. O. Leland to the said Murphy for certain real and personal property, and that from and after the said first day of May, 1912, the said S. O. Leland again became the owner of the said fifty shares of stock in said corporation and the certificate above mentioned evidencing the ownership thereof, and that from and after said first day of May, 1912, the said E. C. Murphy had no right, title or interest in said fifty shares

[16] of stock nor in the certificate of stock above mentioned. Defendants further aver that they are informed and believe and therefore allege the fact to be that after the first day of May, 1912, and prior to May 17th, 1913, the said E. C. Murphy pretended and attempted to transfer the said certificate of stock above mentioned by a purported and attempted assignment thereof to one A. Coolin, and that thereafter and between the first day of May, 1912, and the 17th day of May, 1913, the said A. Coolin by an attempted and purported assignment thereof did attempt and pretend to assign said certificate of stock to the plaintiff herein. The defendants further aver that at the time of the said attempted and purported assignment or transfer of said certificate of stock by the said E. C. Murphy to the said A. Coolin, the said E. C. Murphy was not the owner of the said fifty shares of stock in said corporation and was not the owner of said certificate of stock hereinabove mentioned and had no right, title or interest in the same and was not entitled to the possession thereof; and that at the time of the said attempted and pretended assignment thereof by the said A. Coolin to this plaintiff, the said A. Coolin had no right, title or interest in or to said certificate of stock nor the fifty shares of stock in said corporation in said certificate mentioned and that the said A. Coolin was not the owner of nor entitled to the possession of said shares of stock or the said certificate of stock at the time of the attempted transfer by him to this plaintiff or at any other time or at all.

The plaintiffs further allege that at all times from

and after the first day of May, 1912, until on or about the 1st day of May, 1913, the said S. O. Leland was the owner of and entitled to the possession of [17] the said certificate of stock and the shares of stock therein mentioned, and that on or about the said last-named date the said S. O. Leland procured from this defendant corporation the issuance of a certificate of stock for the said fifty shares of stock then owned by him in said corporation in lieu of the certificate hereinabove mentioned, and thereafter on or about said last-named date sold, assigned and transferred the same to Theodore Leland, one of the defendants herein named, who is now and at all times since said last named date has been the owner of the said fifty shares of stock. Defendants particularly deny that plaintiff is the owner of the fifty shares of stock hereinabove mentioned or is the owner of said certificate of stock, and deny each and every allegation in paragraph four of the amended bill of complaint.

V.

The defendants admit that the defendant corporation was notified on May 17th, 1913, to transfer said stock upon the books of the company to plaintiff's said assignor, A. Coolin, and admit that defendant corporation thereupon at that time refused to transfer said stock as requested and have at all times since refused to transfer said stock to plaintiff. Defendants deny each and every allegation, matter and thing in paragraph five of the amended bill of complaint not herein specifically admitted.

VI.

The defendants deny the allegations of paragraph six of the amended bill of complaint.

VII.

For a second, separate and further defense to said amended bill of complaint the defendants allege:

[18]

I.

That the cause of action stated in the amended bill of complaint of the plaintiff herein is barred by the provisions of subdivision three of Section 6449 of the Revised Codes of the State of Montana 1907.

WHEREFORE, having fully answered said amended bill of complaint, defendants ask that same be dismissed and that they have judgment for costs herein and have such other, further or different relief as to the court may seem meet and proper.

FRED L. GIBSON,

Livingston, Montana,

C. B. NOLAN,

Helena, Montana,

Solicitors and Counsel for Defendants. [19]

State of Montana,

County of Park,—ss.

Fred L. Gibson, being first duly sworn, on oath says: I am one of the solicitors and counsel for the defendants in the above-entitled action and make this affidavit for and on behalf of the defendants for the reason that none of the officers of said defendant corporation, The Leland Company, are able to verify this answer by reason of the fact that they are detained in Gardiner, Montana, which is distant

from Livingston, Montana, fifty-five miles, and that none of the said defendants can verify said answer by reason of the fact that they are detained by business at Gardiner, Montana, and cannot come to Livingston to verify the answer herein, which is prepared in the office of said affiant at Livingston, Montana.

Affiant further says: I have read the foregoing answer and know the contents thereof and the same is true to the best of my information, knowledge and belief.

FRED L. GIBSON.

Subscribed and sworn to before me this 20th day of October, 1915.

[L. S.]

ELBERT F. ALLEN,

Notary Public for the State of Montana, Residing at Livingston, Montana.

My Commission expires Sept. 6th, 1918.

Filed Oct. 21, 1915. Geo. W. Sproule, Clerk. [20]

Thereafter, on October 29, 1915, reply was duly filed herein in the words and figures following, to wit: [21]

In the District Court of the United States, in and for the 4th Division of the State of Montana.

No. 56.

WALTER B. MITCHELL,

Plaintiff,

vs.

THE LELAND COMPANY, a Corporation, et al.
Defendants.

Plaintiff's Reply to the Answer of the Defendants.

Comes now the plaintiff and for reply to the defendants' answer denies, admits and alleges as follows:

I.

Admits the facts set forth in the first 19 lines of the fourth paragraph of defendants' answer to the words "That thereafter," and admits that there was an agreement for the return of said stock to S. O. Leland upon certain terms and conditions, and that upon complying with those terms the said S. O. Leland was to have the said stock back, but deny that the said S. O. Leland complied with said conditions, and allege that upon the failure of the said S. O. Leland to comply with said conditions suit was brought by John Murphy, assignee of E. C. Murphy in said agreement of May 1st, 1912, against S. O. Leland and Amelia Leland in the Superior Court of Spokane County, State of Washington, and the said S. O. Leland and Amelia Leland, being personally served with summons in said cause on the 8th day of March, 1913, and judgment was obtained against the said S. O. Leland and Amelia Leland on the 8th day of April, 1913, and the rights, titles and interest of S. O. Leland and Amelia Leland in and to said certificate of stock No. 1 for fifty shares of the capital stock was sold to satisfy said judgment at sheriff sale to the highest bidder, and A. Coolin there and then became the owner and holder of said certificate; that thereafter and on the 21st of May,

1913, A. Coolin obtained an assignment from E. C. Murphy of said stock for the purpose of clearing up any rights or interest that E. C. Murphy had in said stock, and on the 5th day of June, 1913, the said A. Coolin assigned all the rights, titles and interest to the plaintiff herein, and there and then turned over to the plaintiff the said certificate, and the plaintiff ever since has owned and been in possession and the holder of said certificate; and there has been no appeal taken [22] from any of the proceedings by S. O. Leland and the time for appeal has long since elapsed; plaintiff further denies each and every allegation, matter and thing contained in paragraph four of the defendants' answer except what is specifically admitted herein, and as to the last part of said paragraph the plaintiff has heard that a new certificate was issued to S. O. Leland without the return of the old certificate, but denies that such certificate is a valid certificate or that the said Theodore Leland obtained any right, title or interest in and to the stock of said corporation thereby.

And in reply to the second, separate and further defense of the defendants, denied that the claim set forth in the plaintiff's complaint is barred by section 6449, sub. 3 of the Revised Code of Montana, or, by any other section of said code or at all.

WHEREFORE the plaintiff having answered the affirmative allegation of the defendants' answer fully, prays that notwithstanding the same he is entitled to the relief prayed for in the amended complaint herein.

WALTER B. MITCHELL,
Attorney for Plaintiff.

State of Washington,
County of Spokane,—ss.

Walter B. Mitchell, being first duly sworn, on oath deposes and says that he is the plaintiff in the above-entitled cause and that he has read the foregoing reply and swears the same to be true to the best of his knowledge and belief.

WALTER B. MITCHELL.

Subscribed and sworn to before me this the 27th day of Oct., 1915.

[Seal]

GEO. S. CANFIELD,
Notary Public in and for the State of Washington,
Residing at Spokane, Wash.

Filed Oct. 29, 1915. Geo. W. Sproule, Clerk. [23]

Thereafter, on Feb. 1, 1916, motion for judgment on the pleadings was made by defendants and by the Court denied, the minute entry thereof being in the words and figures following, to wit:

*In the District Court of the United States, in and for
the District of Montana.*

No. 56.

WALTER B. MITCHELL

vs.

THE LELAND CO. et al.

**Minute Entry—February 1, 1916—Motion for
Judgment on Pleadings, etc.**

This cause came on regularly for trial at this time, the plaintiff appearing in his own behalf, and

F. L. Gibson, Esq., and C. B. Nolan, Esq., appearing as counsel for defendants.

Thereupon it was agreed in open court that trial by jury be waived and the cause tried to the court. Thereupon defendants moved for judgment on the pleadings, and thereupon motion argued and submitted, and after due consideration, motion denied and exception of defendants noted.

Thereupon ^{FRANK LIN} F. O. Leland sworn as a witness for plaintiff, and thereupon defendants objected to the introduction of any evidence at this time upon grounds stated to the Court, and thereupon after due consideration, objection overruled and exception noted. Thereupon ^S F. O. Leland was duly examined and testified as a witness for plaintiff, and Walter B. Mitchell sworn and examined as a witness for plaintiff, certain documentary evidence offered and admitted, and thereupon plaintiff rested. Thereupon Theodore Leland, ^S sworn and examined as a witness for defendants, ^S F. O. Leland recalled, and certain documentary evidence offered and admitted, and thereupon defendants rested. Thereupon plaintiff testified in rebuttal, and thereupon evidence being closed, further trial and argument of cause ordered continued until to-morrow morning at 10 o'clock.

Entered in open court February 1, 1916.

GEO. W. SPROULE,

Clerk. [24]

That on the 1st day of February, 1916, at the trial of said cause, certain exhibits were offered and admitted in evidence, being in the words and figures following, to wit: [25]

**Plaintiff's Exhibit No. 1—Letter Dated May 29, 1913,
A. Coolin to The Leland Company.**

May 29, 1913.

The Leland Company,
Gardiner, Montana.

Gentlemen:

Please take notice that the *writter* A. Coolin is the holder of a certificate of stock in your corporation and being certificate No. 1 for Fifty shares of the capital stock of your company and which was originally issued to S. O. Leland on the 20th day of Sept., 1911, signed by Frank Lind, sec., and S. O. Leland, Pres., and sealed with the corporate seal, and which was duly assigned by S. O. Leland on the back of said certificate on the sixth day of March, 1912, and at that time the said S. O. Leland made an affidavit before a notary public here in Spokane that it was free from all encumbrance, said assignment being made to E. C. Murphy who on the 17 day of march, 1912, notified your company of the assignment, and later the said S. O. Leland and E. C. Murphy entered into a contract whereby the said E. C. Murphy was to transfer the said Stock back to him in consideration of the said S. O. Leland paying a certain sum of money, and that is the reason that the stock was not sent on for transfer at

that time. That since that time the said S. O. Leland has persistently refused to pay said amount and suit was instituted here to compel the payment of the money and personal service was obtained on the said S. O. Leland and at the time of suit the said S. O. Leland was tendered the said stock on condition that he pay said money and thereupon he refused to pay and judgment resulted and the said stock was sold at auction sale to satisfy the said judgment and the writer purchased at such sale and holds the said stock and also the sheriff certificate of sale of said stock and had also obtained an assignment of the said shares from the said E. C. Murphy in writing so that there can be no rights claimed by the said E. C. Murphy and now therefore the said A. Coolin makes a formal demand on the said The Leland Company to transfer the said stock to himself on the books of said Leland Company and recognize the said A. Coolin as a stockholder of said [26] Leland Company and providing the said company will agree to transfer he will forward the said certificate for cancellation to his agent at Gardiener who will present the same to your company for transfer. I am sending a copy of this letter to Yegen Bros., bankers of your city, in order that I will get immediate reply, as I have been informed on the 15 & 17 of may, 1913, a few days after the purchase of said stock that the said S. O. Leland Had had a new certificate issued on the strength of an affidavit that he had lost the certificate in question and that your company would refuse to transfer without legal

process, and also My attorney has written your company without receiving any reply and thus this letter is written to give your company a chance to act and have evidence of the service on the said Leland Company. As I can say that the said S. O. Leland never lost said stock and only knew *to* well where the said certificate was and has deliberately made said affidavit for the purpose of avoiding his obligations and to say the least was not made in good faith and cannot in any way defeat the original certificate of Stock, and I intend to force this matter at once and unless I receive a favorable reply by return mail will bring action at once to determine this matter. Hoping that this may not be necessary I Remain,

Yours Truly,

A. COOLIN.

Filed and entered Feb. 1, 1916. Geo. W. Sproule,
Clerk. [27]

Plaintiff's Exhibit No. 2—Registry Return Receipt.

POST OFFICE DEPARTMENT

Penalty for private use to avoid

OFFICIAL BUSINESS

payment of postage \$300

ORIGINAL REG.

NO. 7300

Postmark of Delivering Office

RETURN TO

WALTER B. MITCHELL.

(Name of sender)

Street and Number,)

and Date of Delivery

or Post Office Box.) 201 Hutton Bldg.

SPOKANE,

WASHINGTON.

This card must be neatly and correctly made up and addressed at the postoffice where the article is registered.

The postmaster who delivers the registered article must see that this card is properly signed, legibly postmarked, and mailed to the sender, without envelope or postage.

REGISTRY RETURN RECEIPT. Form 1548.

Received from the postmaster registered article, the original number of which appears on the reverse side of this card.

Date of delivery—6/2, 1913.

(To be filled in by person signing receipt)

When delivery is made to an agent	THE LELAND CO.
of the addressee, both addressee's	(Signature or name of addressee)
name and agent's signature must ap-	THEO. LELAND.
pear in this receipt.	(Signature of addressee's agent)

A registered article must not be delivered to anyone but the addressee or the person in whose care it is addressed, except upon addressee's written order or a written order from the sender transmitted by the mailing postmaster and duly verified.

When the above receipt has been promptly signed, it must be postmarked with the name of delivering office and actual date of delivery and mailed to its address, without envelope or postage.

P. Ex. 2. Filed and entered Feb. 1, 1916. Geo. W. Sproule, Clerk. By ———, Deputy Clerk.

**Plaintiff's Exhibit No. 3—Letter Dated April 17,
1913, Walter B. Mitchell to The Leland Company.**

WALTER B. MITCHELL,

Attorney at Law.

Bell Phone Main 2101.

Home Phone A-2282.

510 Hutton Building,

Spokane, Washington.

April 17, 1913.

The Leland Company,

Gradiner, Mont.

Gentlemen:

A client of mien has in his possession a certificate of stock issued by your company being certificate Number (1) for fifty shares at par value of One Hundred Dollars per share issued to S. O. Leland and signed by Frank Lind *Sectary* and S. O. Leland President date of issue being the 20th day of Sept. 1911, and which stock was assigned to my client in march 6, 1912, but has never been transferred on the books of the company and I would like to inquire whether this transaction still shows there is this certificate out in the name of S. O. Leland and if so what is necessary to do in order to have the same issued to my client and what the value of the said stock is at the present time. Hoping to hear soon I remain.

Yours truly.

Filed and entered Feb. 1, 1916. Geo. W. Sproule,
Clerk. By ———, Deputy Clerk. [29]

**Plaintiff's Exhibit No. 5—Certificate for Fifty
Shares of Capital Stock of The Leland Company.**

Incorporated Under the Laws of the State of Mon-
tana.

Number
1

Shares.
50

THE LELAND COMPANY.

Capital Stock \$20,000.00.

This Certifies That S. O. Leland is the owner of
Fifty Shares of One Hundred Dollars each of the
Capital Stock of The Leland Company transferable
only on the Books of the Corporation in person or
by Attorney on surrender of this Certificate.

Shares \$100 each.

IN WITNESS WHEREOF the duly authorized
officers of the Corporation have hereunto subscribed
their names and caused the corporate Seal to be here-
to affixed this 20th day of Sept., A. D. 1911.

(Corporate Seal)

FRANK LIND,

Secretary.

S. O. LELAND,

President.

Shares \$100 each.

CERTIFICATE

for

50

Shares

of the

Capital Stock

of the

Leland Company.

Issued to S. O. Leland. Dated Sept. 20, 1911.

For value received I hereby sell, transfer and assign to E. C. Murphy the Shares of Stock within mentioned and hereby authorize _____ to make the necessary transfer on the Books of the Corporation.

Witness, — hand and seal this Sixth day of March, 1912.

S. O. LELAND.

Witnessed by

(No. 56. Filed and entered Feb. 1, 1916. Geo. W. Sproule, Clerk. By _____, Deputy Clerk.)
[30]

**Plaintiff's Exhibit No. 6—Assignment of Stock in
Leland Company from E. C. Murphy to A.
Coolin.**

In consideration of One dollar and other valuable consideration I hereby assign sell transfer and assign to A. Coolin of Spokane Wash all my rights titles and interest in and to the certificate of Stock in the Leland Company and being certificate No. 1 for Fifty shared of the Capitol Stock in the said Leland Compant a corporation of the State of Montana, and hereby authorize the said A. Coolin to have the same issued to himself upon the books of the company.

E. C. MURPHY.

Subscribed and sworn to before me this the 21st day of May, 1913.

[Notarial Seal] CLYDE H. THOMPSON,
Notary Public in and for the State of Washington,
Residing at Spokane, Wash.

[Endorsed]: Filed and entered Feb. 1, 1916. Geo.
W. Sproule, Clerk. [31]

**Plaintiff's Exhibit No. 7—Agreement Dated June 5,
1913, Between A. Coolin and W. B. Mitchell.**

*In the District Court of the Sixth Judicial District
of the State of Montana, in and for the County
of Park.*

A. COOLIN,

Plaintiff,

vs.

THE LELAND COMPANY, a Corporation,
FRANK LIND and THEODORE LELAND,
Defendants.

Assignment of Whatever may be Recovered Herein.

This agreement made this 5th day of June, 1913,
by and between A. Coolin of Spokane, Wash., as
party of the first part, and W. B. Mitchell, party of
the second part, Witnesseth:

That whereas the said party of the first part al-
lowed his name to be used for the purpose of bring-
ing suit on some Stock in the above said corporation
and said stock was bid in by said W. B. Mitchell in
the name of A. Coolin, for that purpose only, and the
first party has no interest whatsoever now or at the

time of the sale of said stock or has paid or is liable to pay anything for the assignment of said judgment to him, as the real party in interest in said assignment of said Judgment from John E. Murphy was the said W. B. Mitchell.

Now therefore in consideration of one dollar and other valuable consideration, the receipt whereof is hereby acknowledged by the party of the first part, in hand paid by the party of the second part, the said party of the first part hereby sells, assigns, transfers and sets over to the party of the second part all the rights, titles and interest in and to any judgments that may or could be obtained or recovered in the above entitled suit in the said courts of Montana or otherwise, in which the said party of the first part appears as plaintiff and the said Leland Company appears as defendants.

And the said party of the first part does further assigns, sell & transfer all the rights, titles and interest in and to a certain certificate of stock, and being certificate number (1) for fifty shares of stock of said Leland Company and dated the 20th of Sept., 1911, and also the sheriff's Bill of sale of said mentioned stock, to the party [32] of the second part, and hereby authorize said W. B. Mitchell to have the same placed on the books of said Leland Company in his name and stead, and to prosecute said suit or compromise as deemed best to himself, however at his own cost and expense, saving me harmless from any and all costs in said matter. And hereby give him full power and authority to sign my name to whatever papers that may be necessary to carry out

this suit and give receipt in my name and stead for any moneys that may be collected upon this suit or from the sale of said stock the same as I could if the present was not made.

A. COOLIN.

Signed in the presents of

A. ULBRIGHT.

MARY H. ULBRIGHT.

Filed and entered Feb. 1, 1916. Geo. W. Sproule,
Clerk. [33]

Plaintiff's Exhibit No. 8—Registry Return Receipt.

POST OFFICE DEPARTMENT

Penalty for Private use to avoid

OFFICIAL BUSINESS

payment of postage, \$300.

ORIGINAL REG.

NO. 1246

Postmark of Delivery Office

RETURN TO.

W. B. MITCHELL.

(Name of Sender)

Street and Number,)

and Date of Delivery

or Post Office Box.) 201 Hutton Bldg.

Post Office at Spokane

County ———, State of Wash.

This card must be neatly and correctly made up and addressed at the post office where the article is registered. The postmaster who delivers the registered article must see that this card is properly signed, legibly postmarked, and mailed to the sender, without envelope or postage.

REGISTRY RETURN RECEIPT. Form 1548.

Received from the postmaster registered article, the original number of which appears on the reverse side of this card.

Date of delivery—11/30, 1914.

(To be filled in by person signing receipt)

When delivery is made to an agent	YEGEN BROS. BKRS.
of the addressee, both addressee's	(Signature or name of addressee)
name and agent's signature must ap-	ST. JOHN, Cashier.
pear in this receipt.	(Signature of addressee's agent)

A registered article must not be delivered to anyone but the addressee or the person in whose care it is addressed, except upon addressee's written order from the sender transmitted by the mailing postmaster and duly verified.

When the above receipt has been properly signed, it must be postmarked with the name of delivering office and actual date of delivery and mailed to its address, without envelope or postage.

P. Ex. 8. Filed and entered Feb. 1, 1916. Geo. W. Sproule, Clerk. By _____, Deputy Clerk.
[34]

Plaintiff's Exhibit No. 9—Letter Dated December 3, 1914, M. B. St. John to W. B. Mitchell.

YEGEN BROTHERS, BANKERS.

Transact a General Banking Business.

Gardiner, Mont., Dec. 3, 1914.

W. B. Mitchell, Esq.,
Spokane, Wash.

Dear Sir:

Yours of the 28th ult. to hand with enclosures as stated. In reply will say that we presented this stock to the Leland Co. for registration and same was refused. According to their books new stock was issued in place of this certificate for the reason

that same was lost or destroyed and affidavit to that effect is in possession of S. O. Leland, who is now residing in San Francisco, Calif.

The present officers of the company are Frank Lind President and Theodora Leland Secretary. As to the value of the stock that is very problematical as the company has never paid a dividend to our knowledge. We have known of $\frac{1}{4}$ of the stock to be offered as low as \$3000.00 and no buyers at that figure.

We are returning herewith all of the papers mentioned above and trust our action in the matter will prove satisfactory.

M. B. ST. JOHN,
Cashier.

Filed and entered Feb. 1, 1916. Geo. W. Sproule,
Clerk. [35]

**Plaintiff's Exhibit No. 10—Judgment-Roll in Cause
Entitled John E. Murphy vs. S. O. Leland et al.**

*In the Superior Court of the State of Washington,
in and for the County of Spokane.*

No. 41,258.

JOHN E. MURPHY,

Plaintiff,

vs.

S. O. LELAND and AMELIA LELAND,

Defendants.

Summons.

The State of Washington, to the Above-named S. O.
Leland and Amelia Leland, His Wife, Defendants:

You and each of you are hereby summoned and required to be and appear in the above-entitled court and defend the above-entitled action in the court aforesaid, and answer the complaint of the plaintiff, and serve a copy of your answer or other pleading on the undersigned attorney for the plaintiff at his address below stated, within twenty days after service of this summons upon you, exclusive of the day of service; and in case of your failure to do so, you are hereby notified that judgment will be rendered against you according to the demand of the complaint with the clerk of said court, a copy of which is herewith served upon you and each of you.

W. B. MITCHELL,

Attorney for the Plaintiff.

P. O. Address 201 Hutton Building, Spokane,
Wash. Tel. Main 1971. [36]

*In the Superior Court of the State of Washington,
in and for the County of Spokane.*

No. 41,258.

JOHN E. MURPHY,

Plaintiff,

vs.

S. O. LELAND and AMELIA LELAND,

Defendants.

Complaint.

Comes now the plaintiff and for cause of action alleges as follows:

I.

That the defendants were at all time herein husband and wife and residents of the county of Spokane, Spokane, Wash., and that the property involved in this suit was purchased on behalf of the community.

II.

That on or about the 1st of May, 1912, the defendant, S. O. Leland, entered into a contract on behalf of the community with one E. C. Murphy, a copy of which is in words and figures as follows:

This agreement, made and entered into at Spokane, Washington, this — day of May, 1912, by and between E. C. Murphy of Hillyard, Washington, the party of the first part, and S. O. Leland of Spokane, Washington, the party of the second part,

Witnesseth, that whereas, the said parties have heretofore made certain trades of property whereby the said party of the first part has heretofore deeded to the said party of the second part lot One (1) and west twenty (20) feet of lot two (2) in block thirty-nine (39) of Union Park Addition to Spokane, Washington, also the property known as the "south avenue Hotel" in Hillyard, Washington, and received therefore Fifty (50) shares of stock in the Leland Grocery Company, and whereas each of the said parties has a claim against the other growing out of said trades,

Now Therefore, for the purpose of adjusting said claims and making full settlement and satisfaction thereof and all differences existing between said parties, the said party of the first part does hereby sell to the said party of the second part a certain piano, located at No. 2404 East Sixth Avenue, for the sum of \$100.00 and agrees to transfer and deliver to the said party of the second part the said Fifty (50) shares of stock in the said Leland Grocery company, in consideration of which the said party of the second part does hereby agree to convey, by good and sufficient Quit claim deed, to the said party of the first part, the said lot one (1) and the west twenty (20) feet of lot two (2) in Block thirty-nine (39) in Union Park Addition, also the said South Avenue Hotel property in Hillyard, Washington, and further agrees, that in case it becomes necessary for the said party of the first part, his grantee or assigns, to bring suit to quiet title to the said south avenue hotel property in Hillyard, or the lots on which said hotel is now situated, that the said party of the second part will pay toward the expenses of such suit the sum of \$30.00, and in further consideration [37] of the covenants on the part of each of the said parties herein, each of the said parties does hereby release the other from all claims of every kind and nature, that each may have against the other, and does hereby acknowledge full satisfaction of all such claims.

The obligations of this contract shall extend to and be binding upon the heirs, personal representatives and assigns of both parties hereto.

In witness whereof, the said parties have hereunto subscribed their respective names the day and year first above written.

E. C. MURPHY.

S. O. LELAND.

For value received I hereby sell and assign the within contract to John E. Murphy. Dated June 20th, 1912.

E. C. MURPHY.

III.

That the above contract was duly assigned to the plaintiff on the 20th day of June, 1912, and that the contract was carried out except the payment of the \$100, which payment is long past due and the defendants has persistently refused to pay said amount as agreed or at all. That the piano mentioned in said contract was purchased for the benefit of the community.

IV.

That according to the terms of said contract in case of suit being brought to recover the said contract or enforcement thereof the defendants agreed to pay in addition the amount, thirty dollars, toward the expenses of said suit; that the said expense of said suit consists of the cost and a reasonable attorney fee of thirty dollars, and that thirty dollars is a reasonable attorney fee in said cause.

WHEREFORE, the plaintiff demands judgment in the sum of \$100 and interest from the 1st day of May, 1912, together with \$30, a reasonable attorney

fee, together with his costs and disbursements herein.

W. B. MITCHELL,
Attorney for the Plaintiff.

State of Wash.

County of Spokane,—ss.

W. B. Mitchell, being first duly sworn, on oath deposes and says: That he is the attorney for the plaintiff in the above-entitled cause, has read the foregoing complaint and swears the same to be true as he verily believes, and makes this affidavit on behalf of the plaintiff [38] for the reason that the plaintiff is not present and the facts are within the knowledge of this affiant.

W. B. MITCHELL.

Subscribed and sworn to before me this 7th day of March, 1913.

HORACE H. GUTH,
Notary Public in and for the State of Washington,
Residing at Spokane.

Filed Apr. 8, 1913, at 1:30 o'clock, P. M. Glenn B. Derbyshire, Clerk. Otto W. Bleimer, Deputy.
[39]

*In the Superior Court of the State of Washington,
in and for the County of Spokane.*

No. —.

JOHN E. MURPHY,

Plaintiff,

vs.

S. O. LELAND and AMELIA LELAND,

Defendants.

Motion for Default.

Comes now the plaintiff in the above-entitled action, through his attorney W. B. Mitchell, and moves this Hon. Court for an order of default, against the defendants S. O. Leland and Amelia Leland, his wife, herein, for the reason that the said defendants have made no appearance in said cause and have neither served or filed any answer or other pleading in this case, though more than twenty days have elapsed since the defendants and each of them were served with process in this cause.

This motion is based upon the files and records of this court and the affidavit of W. B. Mitchell following.

W. B. MITCHELL,
Attorney for Plaintiff.

State of Washington,
County of Spokane,—ss.

W. B. Mitchell, being first duly sworn, on oath deposes and says: That he is attorney for the plaintiff in the above-entitled cause; that no pleadings of any kind have been served on him or any one representing the plaintiff in this action; and that more than twenty days have elapsed since the defendant S. O. Leland and Amelia Leland was served, as will more fully appear from the affidavit of service on file in said cause.

W. B. MITCHELL.

Subscribed and sworn to before me this, the 29th day of March, 1913.

JOHN E. ORR,
Notary Public in and for the State of Wash., Resid-
ing at Spokane.

Filed Apr. 8, 1913 at 1:30 o'clock P. M. Glenn B.
Derbyshire, Clerk. Otto W. Bleimer, Deputy. [40]

*In the Superior Court of the State of Washington,
in and for the County of Spokane.*

No. 41,258.

JOHN E. MURPHY

Plaintiff,

vs.

S. O. LELAND and AMELIA LELAND, His Wife,
Defendants.

Default.

In this action, S. O. Leland and Amelia Leland, his wife, defendants, having been regularly served with process in the county of Spokane, Spokane, Wash., and having failed to appear and answer the complaint of the plaintiff on file herein, the default of said defendants, S. O. Leland and Amelia Leland, his wife, is hereby entered according to law.

Attest my hand and seal at court this, the 8th day of April, 1913.

E. H. SULLIVAN,
Judge. [41]

COMPARED.

State of Washington,
County of Spokane,—ss.

Edmund C. Murphy, being first duly sworn, on oath deposes and says: That I am and was on the date herein mentioned a citizen of the United States, and of the State of Washington, over the age of 21 years and competent to be a witness in the within-entitled action, not being the plaintiff herein. That I served the within summons and complaint on Amelia Leland personally by delivering to her at her place of abode, a true copy of said summons and complaint and on served the defendant S. O. Leland, by delivering and leaving a true copy of the within summons and complaint with his wife, Jane Doe Leland, and also a defendant herein, at the abode of said defendants herein, in the city of Spokane, Washington, on the 8th day of March, 1913. Further this affiant saith not.

EDMUND C. MURPHY.

Subscribed and sworn to before me this, the 8 day of April, 1913.

CLYDE H. THOMPSON,

Notary Public in and for the State of Wash., Residing at Spokane, Wash.

Filed Apr. 8, 1913, at 1:30 o'clock P. M. Glenn B. Derbyshire, Clerk. Otto W. Bleimer, Deputy. [42]

No. 41,258.

*In the Superior Court of the State of Washington,
in and for the County of Spokane.*

JOHN E. MURPHY,

Plaintiff,

vs.

S. O. LELAND and AMELIA LELAND, His Wife,
Defendants.

Judgment.

This cause came on regularly for trial on the 8 day of Apr. 1913, before Hon. Sullivan, Judge, presiding, without a jury, a jury having been expressly waived, the plaintiff appearing by his attorney and personally and the defendants having defaulted and their default having heretofore been entered, and the Court being fully advised in the premises and having heretofore made and entered herein its findings of fact and conclusions of law,—

Now, therefore, it is ordered, adjudged and decreed, that the plaintiff recover of the defendants and each of them and the community composed of them the sum of \$105.50, together with \$17.00 costs and disbursements herein, and the plaintiff have judgment for the aforesaid amounts.

Done in open court this the 8 day of Apr., 1913.

E. H. SULLIVAN,
Judge.

Filed May 1, 1913, at 11.25 o'clock A. M. Glenn B. Derbyshire, Clerk. W. C. Steinmetz, Deputy.
[43]

I, John E. Murphy, for and in consideration of One Dollar and other valuable consideration, do hereby sell, assign and set over all my rights, titles and interest in and to a certain judgment rendered in my favor by the Superior Court on the 8 day of April, 1913, case No. 41,258, for the sum of \$105.50 and cost to A. Coolin, and hereby give the said A. Coolin full power and authority to enforce and collect the said Judgment the same as if I myself were present and in case of payment of said Judgment to satisfy the record in full for the same.

Dated this 30 day of April, 1913.

~~JOHN~~ E. MURPHY,

E. C. MURPHY,

Witness.

Filed May 12, 1913, at 10 o'clock A. M. Glenn B. Derbyshire, Clerk. E. E. Burton, Deputy. [44]

Sheriff's Return on Sale of Personal Property.

State of Washington,
County of Spokane,—ss.

I, Geo. E. Stone, Sheriff of Spokane County, Washington, do hereby certify that the annexed execution came into my hands on the 1st day of May, A. D. 1913, and by virtue of the same I did, on the 1st day of May, A. D. 1913, levy upon the personal property hereinafter described as follows, to wit: Certificate No. 1, for fifty (50) shares of the capital stock of the Leland Company, a corporation, of the State of Montana, and that I duly noticed said property, according to law, to be sold by me, at East

Door, Courthouse, in the City of Spokane, in said County and State, on the 12th day of May, A. D. 1913, at ten o'clock in the forenoon of said day. That previous to said sale I caused due and legal notice thereof to be posted in three of the most public places in said County and State, for the period of ten days immediately preceding such sale, and that on the 12th day of May, A. D. 1913, the day which said property was so advertised to be sold as aforesaid, I attended at the time and place fixed for said sale, and exposed the said property for sale by offering it at public auction, according to law, to the highest bidder, for cash in hand, having first given notice that said property was to be sold and sold the whole of the same in one separate parcel to A. Coolin, assignee of plaintiff, for the sum of One Hundred Twenty-six and 70/100 Dollars (\$126.70), said purchaser being the highest and best bidder, and said sum being the highest bid, in the aggregate, for the same; and I have given said purchaser a certificate of sale.

Dated at Spokane, this 12th day of May, A. D. 1913.

GEO. E. STONE,
Sheriff of Spokane County, Washington.

By W. A. Lothrop,
Deputy Sheriff. [45]

SHERIFF'S STATEMENT OF COSTS AND
FEES.

Suit No. 41,258.

JOHN E. MURPHY,

vs.

S. O. LELAND and AMELIA LELAND, his Wife.
State of Washington,
County of Spokane,—ss.

I, Geo. E. Stone, Sheriff of Spokane County,
Washington, do hereby certify that the within judg-
ment has this day been satisfied by the sale of the
within described personal property, as follows, to
wit:

Judgment	105.50
Interest from 4/8/13 to Sale, at per cent	.60
Clerk's Fees	17.00
Accrued Cost	
Sheriff's Fees	3.60
Publication	
Attorney Fee	

Total, \$126.70

Bid, \$126.70

Deficit—Surplus, \$ None

Dated this 12th day of May, 1913.

GEO. E. STONE,

Sheriff Spokane County, Washington.

By W. A. Lothrop,

Deputy.

Sheriff's Certificate of Posting.**JOHN E. MURPHY,**

vs.

S. O. LELAND, et ux.

I, Geo. E. Stone, Sheriff of Spokane County, certify: That on the 1st day of May, 1913, I posted notices of sale in above-entitled case, stating that the sale of the property described in Notice would take place at E. Door, Courthouse, on the 12th day of May, 1913, as follows, to wit: One notice at the east entrance of the Courthouse; one notice on the County Bulletin Board at Bridge & — St; one notice on the County Bulletin Board at N. End Post St. Bridge, all in Spokane County, Washington.

GEO. E. STONE,

Sheriff.

By W. A. Lothrop,

Deputy Sheriff. [46]

Notice—Sheriff's Sale of Personal Property.**SHERIFF'S OFFICE.**

State of Washington,
County of Spokane,—ss.

By virtue of an Execution issued out of the Superior Court of the State of Washington for the County of Spokane, and to me directed and delivered, for a judgment rendered in said Court on the 8th day of April, A. D. 1913, in favor of John E. Murphy, plaintiff, and against S. O. Leland and Amelia Leland, his wife, defendants, for the sum of

\$105.50, with interest at the rate of 6 per cent per annum from said 8th day of April, A. D. 1913, and the further sum of \$—— attorneys' fees and \$17.00 costs of suit, I have levied upon the following described personal property, to wit:

Certificate No. 1, for Fifty (50) Shares of the Capital Stock of the Leland Company, a Corporation.

NOTICE IS HEREBY GIVEN, that on the 12th day of May, A. D., 1913, at the hour of 10 o'clock A. M. of said day, at E. Door, Courthouse, Spokane, Wn., in said County of Spokane, I will sell all the right, title and interest of the said S. O. Leland and Amelia Leland, his wife, defendants, in and to the above-described personal property at public auction, to the highest and best bidder for cash, to satisfy said execution and all costs.

Given under my hand, this 1st day of May, 1913.

GEO. E. STONE,

Sheriff.

By W. A. Lothrop,

Deputy. [47]

*In the Superior Court of the State of Washington,
for the County of Spokane.*

No. 41,258.

JOHN E. MURPHY,

Plaintiff,

vs.

S. O. LELAND and AMELIA LELAND, his Wife,
Defendants.

Execution.

To the Sheriff of Spokane County, Greeting:

Whereas, John E. Murphy recovered judgment against S. O. Leland and Amelia Leland, his wife, in the Superior Court of said County and state, holding terms as aforesaid, on the 8th day of Apr. 1913, for the sum of \$105.50 Dollars, with interest thereon at the rate of 6% from Apr. 8/1913, per annum, until paid, — Dollars Attorney Fees, and 17.00 Dollars costs of suit, amounting in all to the sum of One Hundred Twenty-two 50/100 Dollars (\$122.50).

Therefore, in the name of the State of Washington, you are hereby commanded to levy upon, seize and take into execution the personal property of the said S. O. Leland and Amelia Leland, his wife, in your county, sufficient, subject to execution, to satisfy said judgment, interest and increased interest, cost and increased cost, and make sale thereof according to law; and if sufficient personal property cannot be found, then you are further commanded to make the amount of said judgment, interest and increased interest, cost and increased cost, out of any real property, not exempt by law, and make return of this writ within sixty days from the date hereof.

Witness the Honorable E. H. SULLIVAN, Judge of said Superior Court, and the seal of said court hereto affixed, this 1st day of May, A. D. 1913.

[Seal]

GLENN B. DERBYSHIRE,

County Clerk.

By W. E. Steinmetz,

Deputy. [48]

SHERIFF'S RETURN.

State of Washington,
County of Spokane,—ss.

I hereby certify, that I received the within execution on May 1st, 1913, and I have this day levied on the following described property, to wit: Certificate No. 1 for Fifty (50) Shares of the Capital Stock of the Leland Company, a corporation, of the State of Montana.

Dated this 1st day of May, 1913.

GEO. E. STONE,
Sheriff of said County.
By W. A. Lothrop,
Deputy.

Filed May 12, 1913, at 11:35 o'clock A. M. Glenn B. Derbyshire, Clerk. C. W. Hopkins, Deputy.
[49]

In the Superior Court.

The State of Washington,
County of Spokane,—ss.

I, Glenn B. Derbyshire, Clerk of the Superior Court, within and for said County of Spokane, State of Washington, do hereby certify that I have compared the foregoing copies of the record of the Summons, Complaint, Motion and Affidavit for Default, Order of Default, Affidavit of Service, Judgment, Sheriff's Return on Sale of Personal Property, and Execution in the case of John E. Murphy, Plaintiff, vs. S. O. Leland and Amelia Leland, Defendants, with the original records thereof now re-

maintaining in this office, and have found the same to be correct transcripts therefrom, and of the whole of such original records. And I further certify that said exemplification would be received in evidence in all the Courts of the State of Washington.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Spokane, in said County and State, this 26th day of May, 1913.

[Seal]

GLENN B. DERBYSHIRE,

Clerk of said Superior Court.

By Otto W. Blenner,

Deputy. [50]

In the Superior Court.

The State of Washington,
County of Spokane,—ss.

I, E. H. Sullivan, one of the Judges of the Superior Court, within and for the said County of Spokane, State of Washington, do hereby certify that the said Court is a Court of Record, and that Glenn B. Derbyshire is the clerk of said Superior Court; and Otto W. Blenner, whose signature is affixed to the foregoing certificate, is a duly appointed and acting deputy clerk of said Superior Court; that said certificate is attested in due form of law; that the aforesaid signature of said deputy clerk is genuine, and that the seal thereto affixed is the seal of said Superior Court.

WITNESS my hand at Spokane, in said County and State, this 26th day of May, 1913.

E. H. SULLIVAN,

Judge of said Superior Court.

In the Superior Court.

The State of Washington,
County of Spokane,—ss.

I, Glenn B. Derbyshire, Clerk of the Superior Court, within and for the County of Spokane, State of Washington, do hereby certify that the Hon. E. H. Sullivan, whose name is subscribed to the preceding certificate, is one of the Judges of the Superior Court, within and for the County of Spokane as aforesaid, duly elected, sworn and qualified, and that the signature of said Judge to said certificate is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Spokane in said County and State, this 26th day of May, A. D. 1913.

[Seal]

GLENN DERBYSHIRE.

By Otto W. Blenner,
Deputy.

[Endorsed]: P. Ex. 10. Filed and entered Feb. 1, 1916. Geo. W. Sproule, Clerk. By ———, Deputy Clerk. [51]

Defendants' Exhibit "A"—Contract Between E. C. Murphy and S. O. Leland.

CONTRACT.

THIS AGREEMENT, made and entered into at Spokane, Washington, this — day of May, 1912, by and between E. C. MURPHY of Hillyard, Washington, the party of the first part, and S. O. LELAND, of Spokane, Washington, the party of the second part,

WITNESSETH, that whereas, the said parties have heretofore made certain trades of property whereby the said party of the first part has heretofore deeded to the said party of the second part Lot One (1) and the west twenty (20) feet of Lot Two (2) in Block Thirty-nine (39) of Union Park Addition to Spokane, Washington, also the property known as the "South Avenue Hotel" in Hillyard, Washington, and received therefore Fifty (50) shares of stock in the Leland Grocery Company, and WHEREAS each of the said parties has a claim against the other growing out of said trades,

NOW THEREFORE, for the purpose of adjusting said claims and making full settlement and satisfaction thereof and of all differences existing between said parties, the said party of the first part does hereby sell to the said party of the second part a certain piano, located at No. 2404 East Sixth Avenue, for the sum of \$100.00, and agrees to transfer and deliver to the said party of the second part the said Fifty (50) shares of stock in the said Leland Grocery Company, in consideration of which the said party of the second part does hereby agree to convey, by good and sufficient quit claim deed, to the said party of the first part, the said Lot One (1) and the west twenty (20) feet of Lot Two (2) in Block Thirty-nine (39) in Union Park Addition, also the said South Avenue Hotel property in Hillyard, Washington, and further agrees, that in case it becomes necessary for the said party of the first part, his grantee or assigns, to bring suit to quiet

title to the said South Avenue Hotel property in Hillyard, or the lots on which the said hotel is now situated, that the said party of the second part will pay towards the [52] expenses of such suit the sum of \$30.00, and in further consideration of the covenants on the part of each of the said parties herein, each of said parties does hereby release the other from all claims, of every kind and nature, that each may have against the other, and does hereby acknowledge full satisfaction of all such claims.

The obligations of this contract shall extend to and be binding upon the heirs, personal representatives and assigns of both parties hereto.

IN WITNESS WHEREOF, the said parties have hereunto subscribed their respective names the day and year first above written.

E. C. MURPHY.

S. O. LELAND.

Filed and entered Feb. 1, 1916. Geo. W. Sproule,
Clerk. [53]

Thereafter, on Feb. 4, 1916, the Opinion of the Court was duly filed herein, in the words and figures following, to wit: [54]

*In the District Court of the United States, District
of Montana.*

WALTER B. MITCHELL,

vs.

THE LELAND CO., et al.

Opinion—February 4, 1916.

HEREIN, the Court finds the issues for defendants. And therefrom concludes that plaintiff is not entitled to any relief herein. Costs to defendants.

MEMO.

The shares involved were in Leland's name on the defendant corporation's books. He sold them to Murphy and delivered to the latter the share certificate properly assigned. Murphy had no transfer on the books, and resold the shares and other property to Leland.

Leland performed his part of that contract—deeded certain realty to Murphy and delivered to him a check for \$100. Thereupon Murphy delivered the share certificate to Leland. Immediately, however, Murphy demanded other money from Leland, and upon Leland's refusal to pay, Murphy wrested the share certificate from Leland's hands. Thereafter, on Leland's repeated demands for it, he assured Leland it was lost.

By subsequent assignments the share certificate is in plaintiff's hands. When Murphy delivered the share certificate to Leland he had no further interest therein. He no longer had even a vendor's lien to secure the \$100, for that was waived by parting with possession of the certificate. He committed a trespass by his resumption of possession, and could not thereby restore his lien. The lien would be waived for the further reason that (if claimed at all) it was in part based on an unwarranted demand for

other money than that due under the contract of sale. And he had been in legal effect paid the \$100 so far as lien is concerned. Murphy having no right to the share certificate, plaintiff secured none by Murphy's assignment. [55] The plaintiff is not entitled to a transfer of the shares to himself on defendant's books. The purchase of the share certificate at execution sale amounts to nothing. Corporate shares cannot be sold on execution save by lawful levy upon the corporation. It is not enough that someone presents to a corporation one of its share certificates properly assigned. He must also be entitled to a transfer. And if the corporation is advised that he is not so entitled, it is its duty to refuse a transfer.

The differences, if any, between plaintiff and Leland are not involved in this suit. All that can be and is determined is that plaintiff is not owner of and has no right to a transfer of the Leland shares by defendant upon its books, and so is not entitled to damages for defendant's refusal to transfer.

BOURQUIN, J.

Filed Feb. 4, 1916. Geo. W. Sproule, Clerk. [56]

Thereafter, on February 15, 1916, Decree was duly entered herein, in the words and figures following, to wit: [57]

*In the District Court of the United States, for the
District of Montana.*

WALTER B. MITCHELL,

Plaintiff,

vs.

THE LELAND COMPANY, a Corporation, and
FRANK LIND, Pres., and THEODORE
LELAND, Sec., of said Corporation,

Defendants.

Decree.

This cause came on for trial; a motion for judgment on the pleadings was interposed and overruled. By the original complaint the controversy was equitable in its nature, and, it appearing to the Court that the action in conversion set forth in the amended pleading was barred, on both the original and amended complaint, if the plaintiff was the owner of the stock in question, he would be entitled to relief. The action was thereupon tried as if it were an equitable one and on the cause of action set out in the original complaint, plaintiff agreeing thereto.

Upon due consideration of all the evidence, the Court finds that plaintiff is not entitled to recover upon the facts set out in the complaint.

IT IS ORDERED, ADJUDGED and DECREED, that the action be, and the same is hereby, dismissed,

and that the defendants have their costs taxed at forty-seven dollars and fifty cents.

Dated this 15th day of February, 1916.

GEO. M. BOURQUIN,

Judge.

Filed Feb. 15, 1916. Geo. W. Sproule, Clerk. [58]

That on the 8th day of February, 1916, Petition for Rehearing was duly filed herein, in the words and figures following, to wit:

*In the District Court of the United States, in and for
the District of Montana.*

No. 56.

WALTER B. MITCHELL,

Plaintiff,

vs.

THE LELAND COMPANY et al.

Defendants.

Petition for Rehearing.

Comes now the plaintiff and petitions the Court for a rehearing of the above-entitled cause for the reasons and upon the following grounds:

1st. That the Court erred in finding the issues for the defendants.

2d. That the Court erred in finding the title to said stock was not established in the plaintiff.

3d. That the Court erred in finding that the said sale of said stock and the proceedings in the Superior Court of Spokane, Washington, was not a valid sale

of said stock, and that the plaintiff did not obtain any rights thereby.

4th. That the Court erred in finding the assignments of said stock from E. C. Murphy to A. Coolin and from A. Coolin to the plaintiff was not valid assignments and executed in good faith.

5th. That the Court erred in finding that the value of said stock was not proved to be the sum of \$5,000.

6th. That the Court erred in finding that the defendants have established any ground of defense and that they have proved the defense set forth in the answer.

7th. That the Court erred in prohibiting the plaintiff to introduce the stock books in evidence when the defendants abandoned the defense set forth in the answer. [59]

8th. That the Court erred in allowing S. O. Leland to testify to self-serving declarations over the objection of the plaintiff in connection with the proceedings in Spokane, Wash., and thereby deprived the plaintiff of an opportunity to meet the same, and for the further reason that it was only an attempt to introduce oral testimony to contradict a court record.

9th. That the Court erred in finding the plaintiff is not entitled to any relief herein.

10th. That the Court erred in not finding that the said S. O. Leland was estopped from claiming any rights to said stock certificate No. 1 for fifty shares of the capital stock of the Leland Co., for the reason

that he has transferred the said stock to E. C. Murphy, and the corporation by their officers had introduced answers to interrogatories expressly showing that he had no rights therein and also by its answer in said cause and he would be barred by the proceedings in Spokane from any rights or titles to said stock.

11th. That the Court erred in finding that the said defendant corporation issued a new certificate of stock to S. O. Leland in lieu of the old certificate held by the plaintiff or that said alleged new certificate was again transferred upon the books of the corporation to Theodore Leland, for the reason that the evidence in said cause as shown by the minutes of the meetings is contrary and also the stock books show no such transfer.

12th. That the Court erred in deciding the law of the case in that it has taken for granted that the stock of the corporation cannot be sold except by process in the home of the corporation, and that the domicile of the stock is the home of the corporation and the said errors of law will be more fully set forth in a brief hereto attached and made a part of this petition. [60]

The petition further states that he has discovered since the trial of said cause that the said S. O. Leland is not making any claim to the ownership of said certificate assigned by him to E. C. Murphy and pledged for the payment of certain sums of money set forth in the contract and being marked as an exhibit in said cause, and on information and belief this peti-

tioner states that the said S. O. Leland and the other officers of the corporation only presented the said defense for the purpose of defrauding the plaintiff out of his rights herein.

WHEREFORE, your petitioner prays that a rehearing of said cause be had and that the petitioner be permitted to present the law of said cause in order that rights of the petitioner can be presented fully and avoid necessity of an appeal in said cause.

W. B. MITCHELL,
Petitioner.

State of Washington,
County of Spokane,—ss.

Walter B. Mitchell, being first duly sworn, on oath deposes and says that he is the petitioner herein and the plaintiff in the said cause and that he has read the foregoing petition and knows the contents thereof and swears the same to be true as he verily believes except as to the matters set forth on information and belief, and as to those he believes them to be true, and that this petition is made in good faith, and the petitioner believes the same is meritorious.

WALTER B. MITCHELL.

Subscribed and sworn to before me this 5th day of Feb., 1916.

[Seal]

JOHN E. ORR,
Notary Public in and for the State of Washington,
Residing at Spokane.

Service of the foregoing petition for rehearing by copy admitted this 8th day of February, 1916.

FRED L. GIBSON,

C. B. NOLAN,

Solicitors for Defendants.

Filed Feb. 8, 1916. Geo. W. Sproule, Clerk. [61]

Thereafter, on Feb. 29, 1916, Decision of the Court Denying Petition for Rehearing was duly filed herein, in the words and figures following, to wit:

*In the District Court of the United States, in and for
the District of Montana.*

W. B. MITCHELL

vs.

LELAND CO.

Opinion—February 29, 1916.

Herein, the petition for rehearing is denied.

MEMO.

Nothing new is presented for consideration, and so no reason to rehear the matter.

Filed Feb. 29, 1916. Geo. W. Sproule, Clerk.
[62]

Thereafter, on Aug. 25, 1916, Petition for Appeal was duly filed herein, in the words and figures following, to wit: [63]

*In the District Court of the United States, in and
for the District of Montana of the 4th Division.*

WALTER B. MITCHELL,

Complainant,

vs.

THE LELAND COMPANY, a Corporation,
FRANK LINN, Pres., and THEODORE
LELAND, Secretary,

Defendants.

Petition for Appeal.

The above-named complainant, conceiving himself aggrieved by the decision and the final decree of this Court in this cause made and entered on the 15th day of February, 1916, while a petition for rehearing was under advisement by the Court and which petition for rehearing was denied on the 29th day of February, 1916, making the decree final in the above-entitled cause, for the reasons specified in the assignment of errors which is filed herein, does hereby appeal from the said decision and decree, and each and every part thereof, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and he does hereby petition the Court for an order allowing him to prosecute such appeal that the appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said decision and

decree were made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that a bond on such appeal may be fixed.

Dated this the 24th day of August, 1916.

_____, (Signed)

WALTER B. MITCHELL, (Signed)

Solicitors for Complainant.

Filed Aug. 25, 1916. Geo. W. Sproule, Clerk.
[64]

Thereafter, on Aug. 25, 1916, an Assignment of Errors was duly filed herein, in the words and figures following, to wit: [65]

In the District Court of the United States, in and for the Fourth Division of the State of Montana.

No. 56.

WALTER B. MITCHELL,

Complainant,

vs.

THE LELAND COMPANY, a Cor., FRANK LINN, Pres., and THEODORE LELAND, Sec.

Defendants.

Assignment of Errors.

Walter B. Mitchell, the above-named complainant and appellant, hereby assigns error on the decree of the District Court of the United States for the Fourth Division of the District of the State of Mon-

tana, in the above-entitled cause, made and entered on the 15th day of February, 1916, while a petition for rehearing was being considered by the Court, and which petition for rehearing was denied on the 29th day of February, 1916, making the decree final in the above-entitled cause, dismissing the complainant's bill, in the following particulars:

I.

The Court erred in holding the issues to be with defendants.

II.

The Court erred in holding that the title to the stock in question was not established in the plaintiff.

III.

The Court erred in holding that the plaintiff obtained nothing from the assignments of E. C. Murphy and A. Coolin of said certificate and sheriff bill of sale thereof.

IV.

The Court erred in holding that defendants have established any defense to the plaintiff's complaint whatsoever.

V.

The Court erred in prohibiting the complainant from introducing in evidence the stock books of the corporation, for the purpose of showing that no transfer of any certificate of stock was ever issued to Theodore Leland. [66]

VI.

The Court erred in permitting the witness S. O. Leland over the objection of the complainant to testify as follows:

“That he had completed his contract with Murphy; deeded certain realty to Murphy and delivered Murphy a check for \$100; thereupon Murphy delivered the share certificate in question herein to him; immediately, however, Murphy demanded other money from me and upon my refusing to pay, Murphy wrested the share certificate from my hands, and thereafter on my repeated demand for it he assured me that it was lost,”—for the reason that even if the above evidence was true, it was inadmissible in this cause, as it was for the purpose of impeaching a Judgment of the Superior Court of Spokane County and State of Washington, which was adjudicated against the said S. O. Leland, in said court, and it was wholly incompetent for the witness to attempt to contradict the said judgment, and this Court was wholly without jurisdiction so to do, and for the further reason that it was not one of the issues as raised by the pleadings and further was a total surprise to the plaintiff, and so claim on the trial of said cause, and thereby prevented the complainant of meeting any such testimony.

VII.

The Court erred in holding that the purchase of the certificate in question herein at sheriff sale in Spokane, Wash., amounted to nothing.

VIII.

The Court erred in holding that where a certificate of stock in a foreign corporation was owned by a resident of the State of Washington, and that owner had duly assigned the said certificate to another resident of State of Washington for a valu-

able consideration, and subsequently made a contract with the other resident in which the former owner was to pay a certain sum of money, etc., and upon doing so the said certificate was to be transferred back to him, and the said former owner having failed to so pay as agreed, the holder of said certificate brought [67] a suit against the said former owner (who was still residing in the State of Washington) to enforce the contract for the payment of the money and obtained personal service within the State of Washington upon said former owner, and the cause proceeded to judgment on said contract in favor of the holder of said certificate, whereupon the Court directed execution to be issued and caused the sheriff to seize the said certificate under the statute of the State of Washington, providing that any personal property of the judgment debtor within the jurisdiction of the Court may be seized and sold to satisfy the judgment, and the sheriff in pursuance of such execution did actually seize the said certificate in question and take the same into his possession and proceeded to sell according to the laws of the State of Wash., and the sheriff having sold the said certificate and all the rights, titles and interests of the judgment debtor in and to said certificate to the highest bidder at such sale and delivered to said purchaser a bill of sale thereof and also the certificate itself; and the Court erred in holding that under this state of facts the purchaser at such sale derived no title or claim in or to said certificate and no right to have the same

transferred to said purchaser on the books of the corporation.

IX.

The Court erred in holding that the cause of action for conversion was barred on the original complaint herein.

X.

The Court erred in holding that corporate shares cannot be sold on execution save upon lawful levy upon the corporation.

XI.

The Court erred in holding the complainant is entitled to no relief herein and in not holding that complainant was entitled to the full relief prayed for herein. [68]

XII.

The Court erred in not giving full faith and credit to the proceedings in Spokane, Wash., being the records of a court of record of the State of Washington, in violation of the Constitution of the United States, article 4, sec. I.

WHEREFORE, complainant prays that the decree heretofore entered against him may be reversed and the cause remanded for such further proceedings as are required by the principles of equity and the record in this case.

WALTER B. MITCHELL,
Solicitor for Complainant.

Filed Ang. 25, 1916. Geo. W. Sproule, Clerk.
[69]

Thereafter, on Aug. 25, 1916, an abstract of the testimony was duly lodged with the clerk by plaintiff herein, and thereafter filed on Jan. 2, 1917, in the words and figures following, to wit: [70]

*In the District Court of the United States, for the
4th Division of the State of Montana.*

IN EQUITY.

WALTER B. MITCHELL,

Complainant,

vs.

THE LELAND COMPANY, a Corporation,
FRANK LINN, President, and THEODORE
LELAND, Secretary,

Defendants.

Testimony.

The following is an abstract of the testimony of the witness sworn upon the trial of the above-entitled cause, and of such parts of said testimony as the complainant deems material for the review of the above-entitled cause by the Circuit Court of Appeals, and hereby lodges the same with the clerk of the District Court of the United States for the 4th Division, of the State of Montana, for said purpose, and requests the defendants to file any amendments thereto which they deem proper within the time allowed by law.

Dated this the 24th day of August, 1916.

WALTER B. MITCHELL,
Solicitors for Complainant. [71]

ABSTRACT OF TESTIMONY.

Upon the trial of said cause the defendants interposed a motion for judgment on the pleadings based on the amended bill of complaint, their answer thereto and the reply of the complainant's, which motion was overruled, and it appearing that the said cause of action being an equitable action it was agreed to try said cause on the original bill of complaint and in pursuance to said agreement it was so tried.

Testimony of Walter B. Mitchell, for Plaintiff.

WALTER B. MITCHELL, a witness called on behalf of the plaintiff, after being first duly sworn testified in substance as follows:

Direct Examination.

That the defendants had admitted by its answer to the original complaint everything alleged except the ownership of the stock and value thereof. And then identified the assignment of said certificate of stock from E. C. Murphy to A. Coolin and testified he was acquainted with the signature and that it was E. C. Murphy signature, and offered said assignment in evidence and the same was received as exhibit (—), and further testified that on or about the — day of May, 1912, the said S. O. Leland entered into a contract with E. C. Murphy for the transfer of said certificate of stock in question in the suit; and that suit was brought on said contract by John E. Murphy, the assignee of E. C. Murphy, to enforce the same in the Superior Court of Spokane County

(Testimony of Walter B. Mitchell.)

and State of Washington, and that said court was a court of record in said State of Washington, and then identified the exemplified copy of the proceedings of said court of the files and records in that court, and introduced them in evidence, and the same was received in evidence as exhibit (—); and further testified and identified the assignment and contract between A. Coolin and witness, saying he was acquainted with the signature of A. Coolin and that the signature on the assignment was that of A. Coolin; the same was offered in evidence as exhibit (—) and received by the Court; [72] and further testified after qualifying as an accountant that he had examined the books of the corporation, which was presented to him by Frank Linn, president of said corporation, in compliance of the order of the Court, and found that there had been no trial balances taken, no profit or loss accounts taken, or no expense account kept since the corporation was organized, and that there were no regular posting of the said books, and that all the corporation had done was to keep track of the sales and had from time to time taken an inventory of the assets; and that it was impossible to determine from said books alone without the inventories what the state of the business was in at this time, and that the only way that the value of said stock could be determined was to determine it from the assets and liabilities of the corporation;

He further testified that upon examination of the

(Testimony of Walter B. Mitchell.)

inventories as prepared by Frank Linn, Pres., he found as follows:

“Inventory taken Nov. 10, 1913, Mer-	
chandise	\$14175.32
Accounts due the corporation.....	9472.37
Cash in Bank	2666.16
<hr/>	
Total Assets	26313.85
Debts	3008.54
<hr/>	
Net Assets,	23305.31”

—and that since the stock in question represents one-fourth of the capital stock of the corporation the value of it would be \$5,828.32.

He further testified that another inventory was taken on January 1st, 1915, as follows:

“Inventory of Merchandise.....		\$15338.08
Accounts due corp.	4816.49	
Cash in Bank	3880.00	
<hr/>		
Total Assets	24034.57	
Debts	8796.20	
<hr/>		
Net Assets,	\$15238.37”	

—the above debts was not checked so as to verify the amount and it was taken from Frank Linn’s Schedules; that the sale reported by the corporation from 1st of year 1913, to January, 1914, amounted to the sum of \$43,168.16, and for year 1914, \$34,485.16.

He also identified the certificate of stock in question and introduced the same in evidence and it was

(Testimony of Walter B. Mitchell.)

received, he [73] saying that this certificate was delivered to him at the sale of the same conducted by the sheriff, as he had bid in the stock in the name of A. Coolin at said sale.

PLAINTIFF RESTED.

Testimony of Frank Linn, for Defendants.

FRANK LINN, a witness called on behalf of the defendants, after being first duly sworn, testified in substance as follows:

Direct Examination.

That he was the president of the corporation and had brought the books of the corporation with him as per the order of the Court, and identified them and also the inventories, and the figures of the inventories were the same as Walter B. Mitchell had testified to, except that he claimed the indebtedness of the corporation on November 10, 1913, amounted to the sum of \$11,076.38; and that the stock in question in this suit was worth the sum of \$2,500.00.

Cross-examination.

He testified he had taken the inventories and that the amounts set forth in said inventories as the price of said merchandise was the actual value of the goods at the time of taking said inventory; and in answer to an inquiry as to how he arrived at the amount of indebtedness of \$11,076.38, he testified he did not know, but when taken over each page of the book in which he kept the account of the debts due he verified the statements of Mr. Mitchell of the

(Testimony of Frank Linn.)

indebtedness only being \$3,008.54. The plaintiff offered the books of accounts in evidence then and the defendants objected on the grounds of incompetency and irrelevancy, and the Court overruled the objection and the same was admitted and marked defendants' exhibits (——).

He further testified that the minute-books of the corporation only showed the corporation held one meeting since the stock was issued to S. O. Leland in Sept., 1911, and that was in Dec. 1912, and another on May 21st, 1913, and that at none of these meetings was the question taken up of any lost certificate, and that the corporation received notice of the certificate being held by A. Coolin on the 17th day of May, 1913, and before that even. Plaintiff read into the record then the by-laws of the corporation [74] pertaining to the issuing of certificates of stock in case of one being lost and asked that the clerk include the same in the exhibits.

Plaintiff then offered the stock books of the corporation for the purpose of showing that there had never been any transfer made to Theodore Leland on the books of the corporation, and asked that the same be admitted in evidence; defendants objected to the introduction and the Court sustained the objection.

Testimony of S. O. Leland, for Defendants.

S. O. LELAND, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

That he was the one referred to in said certificate

(Testimony of S. O. Leland.)

in question herein, and that he had transferred and delivered the said certificate to E. C. Murphy for a valuable consideration, to wit: real estate of equal value on or about the 6th of March, 1912, and that some time in — May, 1912, he entered into a contract with E. C. Murphy for the return of said certificate upon S. O. Leland making certain transfers of real property and the payment of a certain sum of money to E. C. Murphy more specifically set forth in a contract, a copy of which was introduced in evidence by defendant as exhibit (—) and will also be found in the records of the Superior Court of Spokane, Wash., or plaintiff exhibit (—);

The witness was then asked to explain what occurred between him and E. C. Murphy in reference to the return of the certificate and the performance of the above-mentioned contract.

Plaintiff objected to any testimony on this subject for the reason that it was an attempt to impeach the judgment of the Superior Court of Spokane County, State of Washington, a court of record of that state, and not one of the issues raised by the pleadings, and for the further reason that the witness was personally served with process in said proceedings in Spokane, Washington, had his day in court and made no effort to appeal from said decision, and the time for appeal has since lapsed, and that the witness would now be estopped to introduce testimony to impeach said judgment; and for the further reason that the matter was fully adjudicated, and this testimony was immaterial [75] and

(Testimony of S. O. Leland.)

incompetent in this proceedings; and for the further reason that it was a total surprise to the plaintiff not having been plead in any way and would prohibit the plaintiff from rebutting the same; the Court overruled the objection and witness testified as follows: (In substance.) "That he had completed his contract with Murphy, deeded certain realty to Murphy and delivered Murphy a check for \$100.00; thereupon Murphy delivered the share certificate in question to him without any written assignment; immediately, however, Murphy demanded other money from me and upon my refusing to pay, Murphy wrested the share certificate from my hands, and thereafter on my repeated demand for it he assured me that it was lost."

Cross-examination.

Witness further testified he was personally served with process in the city of Spokane, Wash., and that he was then a resident of Spokane, Wash., and allowed the said suit to go by default and made no attempt to fight it at all; and before judgment was taken Walter B. Mitchell, plaintiff herein, tendered the certificate in question to him and demanded the money called for in said contract and he refused to pay it then; and that later, about the middle of May, he moved to California and has resided there since.

Testimony of Walter B. Mitchell, for Plaintiff
(Recalled).

WALTER B. MITCHELL, was recalled on behalf of the plaintiff, and testified that the date of

(Testimony of Walter B. Mitchell.)

the tender of said certificate to S. O. Leland and demand for the payment was prior to taking default in said proceedings, which according to the record of the cause was on the 8th day of April, 1913, and that at that time S. O. Leland made no claim of ever offering Murphy a check, and he refusing it or mentioning anything that would create a suspicion of anything of that nature.

Received for the court Aug. 25, 1916. Geo. W. Sproule, Clerk.

Filed Jan. 2, 1917. Geo. W. Sproule, Clerk.
[76]

Thereafter, on Aug. 25, 1916, a notice for settlement of the record was duly filed herein, in the words and figures following, to wit: [77]

*In the District Court of the United States, for the
4th Division of the State of Montana.*

No. 56—IN EQUITY.

WALTER B. MITCHELL,

Complainant,

vs.

THE LELAND COMPANY, a Corporation,
FRANK LINN, Pres., and THEODORE
LELAND, Sec.,

Defendants.

Notice of Settlement of Record.

To the Above-named Defendants and to Your Attorneys, C. B. Nolan and Fred L. Gibson.

Please take notice that the complainant will present the within abstract to the court at Helena, Montana, at 10 o'clock of the day of the 15th day of September, 1916, for approval unless the above date shall be agreed on by the parties for some other day more convenient for counsel.

This notice is given in compliance to rule 75, of the Equity Rules of this court.

Dated this the 24th day of August, 1916.

WALTER B. MITCHELL,
Solicitor for Complainant.

Filed Aug. 25, 1916. Geo. W. Sproule, Clerk.
[78]

Thereafter, on Aug. 26, 1916, an order allowing appeal and fixing bond was duly made and entered herein, in the words and figures following, to wit:
[79]

In the District Court of the United States, in and for the District of Montana for the 4th Division.

No. 56.

WALTER B. MITCHELL,

Complainant,

vs.

THE LELAND COMPANY, a Cor., et al.,
Defendants.

Order Allowing Appeal and Fixing Bond.

It is ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Judicial Circuit from the decision and decree heretofore filed and entered herein be and the same is hereby allowed, in pursuance of the foregoing petition, and a certified transcript of the record, proceedings and papers, and all proceedings upon which such decree was made, be transmitted to the said Circuit Court of Appeals.

It is further ordered that the complainant give bond on this appeal in the sum of \$300 dollars.

Done in open court this 26th day of August, 1916.

BOURQUIN,

Judge.

Filed Aug. 26, 1916. Geo. W. Sproule, Clerk.
[80]

Thereafter, on Aug. 26, 1916, a Citation was duly issued herein, which original Citation is hereto annexed and is in the words and figures following, to wit: [81]

In the District Court of the United States, in and for the 4th Division of the State of Montana.

IN EQUITY—No. 56.

WALTER B. MITCHELL,

Plaintiff,

vs.

THE LELAND COMPANY, a Cor., et al.,

Defendants.

Citation.

The United States of America to The Leland Company, a Corporation, Frank Linn, President, and Theodore Leland, Secretary, of said Corporation, Defendants, GREETING:

Whereas, Walter B. Mitchell, the complainant in the above-entitled case, has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit, from the decree lately rendered in the District Court of the United States for the 4th Division of the State of Montana, made in favor of you on the 15th day of February, 1916, while a petition for rehearing was under advisement by the said trial court, and which petition was denied on the 29th day of February, 1916, making said decree final, and has furnished the security required by law:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco, State of California, within thirty days from the date of this writ, pursuant to such appeal, and to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at the City of Butte, State of Montana, in the Ninth Circuit, this 26 day Aug.,

in the year of our Lord one thousand nine hundred and sixteen.

BOURQUIN,

District Judge Presiding Therein.

[Seal]

Attest: GEO. W. SPROULE,

Clerk.

By Harry H. Walker,

Deputy. [82]

Service of the within citation is hereby acknowledged this the — day of —, 1916.

FRED L. GIBSON,

WALSH, NOLAN & SCALLON,

Attorneys for Defendants, The Leland Company, a
Cor., and Frank Linn, President, and Theodore
Leland, Secretary. [83]

[Endorsed]: No. 56. In the District Court of the
United States for the 4th Division of the State of
Montana. Walter B. Mitchell, Complainant, vs. The
Leland Company, a Corporation, et al., Defendants.
Citation. Filed Sept. 21, 1916. Geo. W. Sproule,
Clerk. [84]

That on August 25, 1916, a praecipe for transcript on appeal was filed by plaintiff herein, in the words and figures following, to wit: [85]

In the District Court of the United States, in and for the 4th Division of the State of Montana.

No. 56.

WALTER B. MITCHELL,

Complainant,

vs.

THE LELAND COMPANY, a Cor., et al.,

Defendants.

Praecipe for Transcript on Appeal.

To Geo. W. Sproule, Clerk of the District Court of the United States, in and for the 4th Division of the State of Montana.

Whereas, the above-named plaintiff, Walter B. Mitchell, on the —— day of August, 1916, petitioned the above-entitled court for an order allowing an appeal of said cause to the Circuit Court of Appeal for the Ninth Circuit, and said order allowing said appeal was made and entered on the —— day of August, 1916, and Bond fixed by the Court, and a further order made for a transcript of the papers, etc., in said cause to be certified to the said Circuit:

Now, therefore, in accordance with rule 75 and 76 of the rules of practice of the above-entitled courts, you are hereby requested to include in said transcript the following parts of the record, and attached abstract of the testimony, the same being what the

complainant and appellant deems material to the review of the decision of this Court in the *appellant* court, to wit:

1. The original bill of complaint.
2. The defendants' answer to original bill of complaint.
3. The written ruling of the Court with Memo. filed on Feb. 4, 1916.
4. Decree of the Court signed and filed Feb. 15, 1916.
5. Decision of the Court denying the petition for rehearing filed on the 29th day of Feb., 1916, including proof of date of filing of petition for rehearing.
6. All exhibits introduced at the trial of said cause.
7. The abstract of the parts of the testimony hereto attached.

You are hereby requested to prepare the above transcript according to the rules and practice of the above-entitled court.

Dated this 24th day of Aug., 1916.

WALTER B. MITCHELL,

Attorney for complainant.

Filed Aug. 25, 1916. Geo. W. Sproule, Clerk. [86]

Thereafter, on Sept. 2, 1916, a praecipe for additional portions of the record to be incorporated in the transcript on appeal was filed by defendants herein, in the words and figures following, to wit:

*In the District Court of the United States, in and
for the District of Montana.*

WALTER B. MITCHELL,

Plaintiff and Appellant,

vs.

THE LELAND COMPANY, a Corporation, et al.,
Defendants and Appellees.

Praecipe for Additional Portions of Record.

The appellees above named and their solicitors desire to add to the record on appeal, as provided for in the praecipe on file in said action, additional portions of the record as follows:

1. Stipulation allowing an amendment to bill of complaint bearing date September 23, 1915, and filed October 13, 1915.
2. Amended bill of complaint filed pursuant to said stipulation on October 13, 1915.
3. Answer to said amended bill of complaint filed October 21, 1915.
4. Reply to said answer filed October 29, 1915; and
5. Motion for judgment on the pleadings and ruling thereon.

F. L. GIBSON,

C. B. NOLAN,

Solicitors for Defendants and Appellees.

Filed Sept. 2, 1916. Geo. W. Sproule, Clerk. [87]

Thereafter, on Sept. 15, 1916, bond on appeal was duly filed herein, in the words and figures following, to wit: [88]

In the District Court of the United States, in and for the 4th Division of the State of Montana.

IN EQUITY—NO. 56.

WALTER B. MITCHELL,

Complainant,

vs.

THE LELAND COMPANY, a Cor., et al.,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, that we, Walter B. Mitchell, as principal, and The Aetna Accident & Liability Company, of Hartford, Connecticut, as sureties, are held and firmly bound unto the Leland Company, a Corporation, and Frank Linn, President, and Theodore Leland, Secretary, in the full and just sum of Three Hundred (\$300.00) Dollars, to be paid unto the above-named obligees, their attorneys, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with out seals, and dated this 12th day of September, in the year of our Lord one thousand nine hundred and sixteen.

Whereas, lately at a District Court of the United States for the 4th Division of the State of Montana,

in an action in said court between Walter B. Mitchell, complainant, and The Leland Company, a corporation, and Frank Linn, President, and Theodore Leland, Secretary, a decree was rendered against the said Walter B. Mitchell, complainant, and he, said Walter B. Mitchell, complainant, having obtained an appeal and filed a copy thereof in the clerk's office of the said Court, to reverse the decree in the aforesaid suit, and a citation directed to the said Leland Company, a corporation, and Frank Linn, President, and Theodore Leland, Secretary, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, of said Circuit, on the 25th day of September next. [89]

NOW, the condition of the above obligation is such that if the said Walter B. Mitchell, complainant, shall prosecute his appeal to an end, and answer all damages and costs, if he fails to make his appeal good, then the above obligation to be void; else to remain in full force and virtue.

WALTER B. MITCHELL,
Principal.

THE AETNA ACCIDENT & LIABILITY
COMPANY.

[Corporation Seal] By J. F. PETERS,
Its Resident Vice-President.

By F. W. MADDUX,
Its Resident Assistant Secretary.

This Bond approved as to form and amount and sufficiency of surety.

Dated this the 15th day of Sept., 1916.

BOURQUIN,

District Judge and One of the Judges of the United
States Circuit Court Presiding Therein.

Filed Sept. 15, 1916. Geo. W. Sproule, Clerk. [90]

Thereafter, on Sept. 15, 1916, an order extending time to file record on appeal was duly made and entered herein, in the words and figures following, to wit:

*In the District Court of the United States, in and
for the District of Montana.*

WALTER B. MITCHELL,

Plaintiff,

vs.

THE LELAND COMPANY, a Cor., et al.,

Defendants.

**Order Extending Time from September 25, 1916, to
October 25, 1916, for Return of Citation.**

Upon consideration of the motion of the plaintiff and good cause appearing,—

IT IS ORDERED that the time for the return of the citation in the above-entitled cause which was heretofore made returnable on the 25th of September, 1916, be and the same is hereby extended thirty days from the 25th day of Sept., 1916, to the 25th day of October, 1916.

Done in open court this the 15 day of Sept., 1916.

BOURQUIN,

Judge.

Entered Sept. 15, 1916. Geo. W. Sproule, Clerk.

[91]

Thereafter, on Oct. 16, 1916, an order extending time to file record on appeal was duly made and entered herein, in the words and figures following, to wit:

*In the District Court of the United States, in and
for the District of Montana.*

WALTER B. MITCHELL,

Plaintiff,

vs.

THE LELAND COMPANY, a Cor., et al.,

Defendants.

**Order Extending Time from October 25, 1916, to
November 25, 1916, for Return of Citation.**

Upon consideration of the motion of the plaintiff and good cause appearing,—

IT IS ORDERED that the time for the return of the citation in the above-entitled cause which was heretofore made returnable on the 25th of September, 1916, and by order of the Court extended to and including the 25th day of October, 1916, be and the same is hereby extended thirty days from the 25th day of October, 1916, to and including the 25th day of November, 1916.

Done in open court this 16 day of October, 1916.

BOURQUIN,

Judge.

Entered Oct. 16, 1916. Geo. W. Sproule, Clerk.

[92]

Thereafter, on Nov. 16, 1916, an order extending time to file record on appeal was duly made and entered herein, in the words and figures following, to wit:

*In the District Court of the United States, in and
for the District of Montana.*

WALTER B. MITCHELL,

Plaintiff,

vs.

THE LELAND COMPANY, a Cor., et al.,

Defendants.

**Order Extending Time from November 25, 1916, to
December 25, 1916, for Return of Citation.**

Upon consideration of the motion of the plaintiff and good cause appearing,—

IT IS HEREBY ORDERED that the time for the return of the citation in the above-entitled cause which was heretofore made returnable on the 25th day of September, 1916, and by order of the Court extended to and including the 25th day of October, 1916, and again by order of the Court extended to and including the 25th day of November, 1916, be and the same is hereby extended thirty days from the 25th day of November, 1916, to and including the 25th day of December, 1916.

Done in open court this 16 day of November, 1916.

BOURQUIN,

Judge.

Entered Nov. 16, 1916. Geo. W. Sproule, Clerk.

Thereafter, on Dec. 18, 1916, an order extending time to file record on appeal was duly made and entered herein, in the words and figures following, to wit:

*In the District Court of the United States, in and
for the District of Montana.*

WALTER B. MITCHELL,

Plaintiff,

vs.

THE LELAND COMPANY, a Cor., et al.,

Defendants.

**Order Extending Time to January 5, 1917, for
Return of Record.**

In the absence of the record of the case, the Court is not clear in recollection. However, so far as the attached affidavit goes, no cause is disclosed for further time.

If respondent has not complied with the rules, appellant need not delay but can and long since should have proceeded. The time is extended to Jan. 5, 1917, if thus permitted.

Dec. 18, 1916.

BOURQUIN,

Judge.

Entered Dec. 18, 1916. Geo. W. Sproule, Clerk.

Thereafter, on Jan. 2, 1917, an order extending time to file record on appeal was duly made and entered herein, in the words and figures following, to wit:

*In the District Court of the United States, in and
for the District of Montana.*

WALTER B. MITCHELL,

Plaintiff,

vs.

THE LELAND COMPANY, a Cor., et al.,

Defendants.

**Order Extending Time from January 5, 1917, to
January 25, 1917, for Return of Citation.**

Upon consideration of the motion of the plaintiff and good cause appearing,—

IT IS ORDERED that the time for the return of the citation in the above-entitled cause which was heretofore made returnable on the 25th day of August, 1916, and has been extended by order of Court from time to time to the 5th day of January, 1917, be and the same is hereby extended twenty days from the 5th day of January, 1917, to and including the 25th day of January, 1917.

Done in open court this the 2d day of January, 1917.

BOURQUIN,

Judge.

Entered Jan. 2, 1917. Geo. W. Sproule, Clerk.

Thereafter, on Jan. 2d, 1917, motion for order approving the record on appeal herein, and an order approving the record, was duly filed and entered herein, in the words and figures following, to wit:

*In the District Court of the United States, in and
for the District of Montana.*

WALTER B. MITCHELL,

Plaintiff,

vs.

THE LELAND COMPANY, a Cor., et al.,

Defendants.

Motion for Order Settling Statement.

Comes now the plaintiff and asks the Court for an order settling the record on appeal in the above-entitled cause as made and filed on the 25th day of August, 1916, together with the additional praecipe filed by the defendants, for the reason that the defendants have not served or filed any objections to the proposed statement of the plaintiff so filed or have they requested any amendments and the time for filing the same has long since been up.

This motion is based on the files and record in said cause and affidavit of Walter B. Mitchell following.

WALTER B. MITCHELL,

Attorney for Plaintiff.

State of Washington,

County of Spokane,—ss.

Walter B. Mitchell, being first duly sworn, on oath deposes and says that he is the plaintiff and that the defendant has not served or filed any amendments in

the above-entitled cause and the time for doing so has long since lapsed.

WALTER B. MITCHELL.

Subscribed and sworn to before me this the 20th day of December, 1916.

[Seal] JAMES M. SIMPSON,
Notary Public for the State of Washington, Residing
at Spokane.

Record, as requested by the parties, approved
1-2-17.

BOURQUIN,
Judge.

Filed Jan. 2, 1917. Geo. W. Sproule, Clerk. [96]

Clerk's Certificate to Transcript of Record.

United States of America,
District of Montana,—ss.

I, Geo. W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 96 pages, numbered consecutively from 1 to 96, inclusive, is a true and correct transcript of the pleadings, orders, decree, opinions of the Court, and all other proceedings in said cause required to be incorporated in the record on appeal therein by the praecipes of the appellant and the appellees for said record on appeal, including the exhibits (except certain books withdrawn from the files of said court by order of the Court dated February 15, 1916), and

said praecipis, and of the whole thereof, as appears from the original records and files of said court in my possession as such clerk; and I do further certify and return that I have annexed to said transcript and included within said pages the original citation issued in said cause.

I further certify that the costs of the transcript of record on appeal amount to the sum of Twenty-six 75/100 Dollars (\$26.75), and have been paid by the appellant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court at Helena, Montana, this 31st day of January, A. D. 1917.

[Seal]

GEO. W. SPROULE,

Clerk.

By C. R. Garlow,

Deputy Clerk. [97]

[Endorsed]: No. 2932. United States Circuit Court of Appeals for the Ninth Circuit. Walter B. Mitchell, Appellant, v. The Leland Company, a Corporation, Frank Linn and Theodore Leland, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Montana.

Filed February 5, 1917.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

*In the District Court of the United States, in and
for the 4th Division of the State of Montana.*

IN EQUITY—No. 56.

WALTER B. MITCHELL,

Plaintiff,

vs.

THE LELAND COMPANY, a Cor., et al.,

Defendants.

**Order Extending Time from September 25, 1916, to
October 25, 1916, for Return of Citation (Original).**

Upon consideration of the motion of the plaintiff
and good cause appearing,—

IT IS ORDERED that the time for return of the
citation in the above-entitled cause which was here-
tofore made returnable on the 25th day of Septem-
ber, 1916, be and the same is hereby extended thirty
days from the 25th day of Sept., 1916, to the 25th
day of October, 1916.

Done in open court this the 15 day of Sept., 1916.

BOURQUIN,

Judge.

[Endorsed]: Walter B. Mitchell vs. The Leland
Company, a Corporation, et al. Order Extending
Time to File Record on Appeal.

*In the District Court of the United States, in and
for the 4th Division of the State of Montana.*

IN EQUITY—No. 56.

WALTER B. MITCHELL,

Plaintiff,

vs.

THE LELAND COMPANY, a Cor., et al.,

Defendants.

**Order Extending Time from October 25, 1916, to
November 25, 1916, for Return of Citation
(Original).**

Upon consideration of the motion of the plaintiff
and good cause appearing,—

IT IS ORDERED that the time for the return of
the citation in the above-entitled cause which was
heretofore made returnable on the 25th of September,
1916, and by order of this Court extended to and
including the 25th day of October, 1916, be and the
same is hereby extended thirty days from the 25th
day of October, 1916, to and including the 25th day
of November, 1916.

Done in open court this the 16 day of October, 1916.

BOURQUIN,

Judge.

[Endorsed]: No. ——. United States Circuit
Court of Appeals for the Ninth Circuit. Order
Under Rule 16 Enlarging Time to November 25,
1916, to File Record Thereof and to Docket Case.
Filed Oct. 20, 1916. F. D. Monckton, Clerk.

*In the District Court of the United States, in and
for the 4th Division of the State of Montana.*

No. 56.

WALTER B. MITCHELL,

Plaintiff,

vs.

THE LELAND COMPANY, a Cor., et al.,

Defendants.

**Order Extending Time from November 25, 1916, to
December 25, 1916, for Return of Citation
(Original).**

Upon consideration of the motion of the plaintiff
and good cause appearing,—

IT IS HEREBY ordered that the time for the
return of the citation in the above-entitled cause
which was heretofore made returnable on the 25th
day of September, 1916, and by order of the Court
extended to and including the 25th day of October,
1916, and again by order of the Court extended to
and including the 25th day of November, 1916, be and
the same is hereby extended thirty days from the
25th day of November, 1916, to and including the
25th day of December, 1916.

Done in open court this 16 day of November, 1916.

BOURQUIN,

Judge.

[Endorsed]: No. ——. United States Circuit
Court of Appeals for the Ninth Circuit. Order
Under Rule 16 Enlarging Time to Dec. 25th, 1916, to

File Record Thereof and to Docket Case. Filed Nov. 20, 1916. F. D. Monckton, Clerk.

In the District Court of the United States, in and for the 4th Division of the State of Montana.

No. 56.

WALTER B. MITCHELL,

Plaintiff,

vs.

THE LELAND COMPANY, a Cor., et al.,

Defendants.

Order Extending Time from December 25, 1916, to January 25, 1917, for Return of Citation (Original).

Upon consideration of the motion of the plaintiff and good cause appearing,—

IT IS ORDERED that the time for the return of the citation in the above-entitled cause which was heretofore made returnable on the 25th day of September, 1916, and by order of Court from time to time extended to the 25th day of December, 1916, be and the same is hereby extended thirty days from the 25th day of December, 1916, to and including the 25th day of January, 1917.

Done in open court this the — day of December, 1916.

Judge.

In the absence of the record of the case, the Court is not clear in recollection. However, so far as the attached affidavit goes, no cause is disclosed for

further time. If respondent has not complied with the rules, appellant need not delay but can and long since should have proceeded.

The time is extended to January 5, 1917, if thus permitted.

Dec. 18, 1916.

BOURQUIN,
Judge.

[Endorsed]: No. —. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to January 5, 1917, to File Record Thereof and to Docket Case. Filed Dec. 23, 1916. F. D. Monekton, Clerk.

In the District Court of the United States, in and for the 4th Division of the State of Montana.

No. 56.

WALTER B. MITCHELL,

Plaintiff,

vs.

THE LELAND COMPANY, a Cor., et al.,

Defendants.

Order Extending Time from January 5, 1917, to January 25, 1917, for Return of Citation (Original).

Upon consideration of the motion of the plaintiff and good cause appearing,—

IT IS ORDERED that the time for the return of the citation in the above-entitled cause which was heretofore made returnable on the 25th of August, 1916, and has been extended by order of Court from

time to time to the 5th day of January, 1917, be and the same is hereby extended twenty days from the 5th day of January, 1917, to and including the 25th day of January, 1917.

Done in open court this the 2 day of January, 1917.

BOURQUIN,

Judge.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to January 25th, 1917, to File Record Thereof and to Docket Case. Filed Jan. 8, 1917. F. D. Monckton, Clerk.

*In the Circuit Court of Appeals of the United States,
in and for the Ninth Circuit.*

EQUITY.

WALTER B. MITCHELL,

Plaintiff and Appellant,

vs.

THE LELAND CO. et al.,

Defendant and Appellee.

Motion for Extension of Time.

Comes now the plaintiff and moves the Court for an order extending the time for the filing of the citation in the above-entitled cause which was heretofore made returnable on the 25th day of January, 1917, for the reason and upon the grounds that the clerk of the District Court at Helena, Montana, is not able to complete the record and have the same forwarded to this court by the 25th of January, 1917.

This motion is based upon the files and records in the above-entitled cause and the affidavit hereto attached.

WALTER B. MITCHELL,
Plaintiff and Appellant.

State of Washington,
County of Spokane,—ss.

Walter B. Mitchell, being first duly sworn, on oath deposes and says that he is the plaintiff and appellant herein and that he has forwarded to the clerk of the District Court the money asked by the clerk for the record in the above-entitled cause on appeal, and that he is informed that the clerk has received the same and the said record was duly approved by the District Court on the 2d of January, 1917, and the affiant has further prepared most of the copies of the record for the clerk and forwarded them to the said clerk in order to hurry the work of preparing of the record, but that notwithstanding this the clerk of the District Court informed the affiant on the 24th day of January, 1917, that owing to sickness of the said clerk that the deputy could not be able to get the record finished and forwarded by the 25th and asked to have fifteen days' further time in order to complete the record and forward it to San Francisco, and therefore it is necessary to obtain this extension of time so that the time will not lapse in which to file the citation; affiant on account of the shortness of the time wired for a temporary extension till the motion could arrive and the formal order entered and under rule 16 it provides that the Court which signed the citation could grant the extension

or any Judge of this court, and since the time was too short to make formal application to District Court, affiant applied direct to this Court and prays that said order be granted, as this delay is unavoidable under the above state of facts.

WALTER B. MITCHELL.

Subscribed and sworn to before me this the 24th day of January, 1917.

[Seal]

EUGENE A. BARNES,

Notary Public for the State of Washington, Residing at Spokane.

*In the Circuit Court of Appeals of the United States,
in and for the Ninth Circuit.*

WALTER B. MITCHELL,

Plaintiff and Appellant,

vs.

THE LELAND COMPANY et al.,

Defendants and Appellee.

**Order Extending Time from January 25, 1917, to
February 9, 1917, for Return of Citation
(Original).**

Upon consideration of the motion of the plaintiff and good cause appearing,—

IT IS HEREBY ORDERED that the time for the return of the citation in the above-entitled cause which was heretofore made returnable on the 25th day of January, 1917, be and the same is hereby extended for a period of fifteen days to and including the 9th day of February, 1917.

Done in open court this the 25th day of January,
1917.

Judge.

Helena, Mont., Jan. 2, 1917.

Dear Sir:

In case No. 56, time extended until Jan. 25, 1917,
to get up record. Record as presented by parties
approved.

Yours truly,

GEO. W. SPROULE,

Clerk of Court.

*United States Circuit Court of Appeals for the
Ninth Circuit.*

WALTER B. MITCHELL,

Plaintiff in Error,

vs.

THE LELAND COMPANY, a Corporation, et al.,
Defendants in Error.

**Order Extending Time to February 9, 1917, to File
Record and Docket Cause.**

Upon telegraphic application of the plaintiff in
error, and good cause therefor appearing, it is hereby
ordered that the time to file record and docket above-
entitled cause in this court be, and hereby is ex-
tended to and including February 9, 1917.

WM. W. MORROW,

United States Circuit Judge, and Judge of the
United States Circuit Court of Appeals for the
Ninth Circuit.

San Francisco, Cal., January 24, 1917.

[Endorsed]: No. —. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to and Inclg. Feb. 9, 1917, to File Record Thereof and to Docket Case. Filed Jan. 24, 1917. F. D. Monckton, Clerk.

No. 2932. United States Circuit Court of Appeals for the Ninth Circuit. Mitchell vs. Leland Company et al. Six Orders Under Rule 16 Enlarging Time to February 9, 1917, to File Record Thereof and to Docket Case. Refiled Feb. 5, 1917. F. D. Monckton, Clerk.

